

June 17, 2004

Mr. Leslie E. Young
203 North Washington Street
Wanatah, Indiana 46390

*Re: 04-FC-96; Alleged Violation of the Access to Public Records Act by the
Town of Wanatah*

Dear Mr. Young:

This is in response to your formal complaint alleging that the Town of Wanatah (Town) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied you access to public records. For the reasons set forth below, I find that the Town's response to your record request failed to cite to the statute authorizing the nondisclosure in violation of the APRA. I further find that the Town's continuing failure to provide the requested records or to provide you with a citation to the specific statute authorizing its nondisclosure constitutes a continuing violation of the statute.

BACKGROUND

On May 21, 2004, you made a written request for records to the Town. Your request sought the "payroll master file calendar year balances for 1998, 1999, 2000 and 2001." You further sought the time sheets for two employees for several different periods. It appears from a written entry on your written request form that you were immediately provided with the payroll records. With regard to the time sheets, the Town indicated that those records were for "internal use only," but promised to research further. The Town did not give you a date certain for any further response. On June 8, 2004, the Town responded further and denied production of the time sheets on the advice of counsel. The Town's written denial asserted that "the time cards are for internal use only and [are] not public record." The Town's denial did not include a citation to the specific statutory exemption authorizing its nondisclosure. This complaint followed.¹

¹ Indiana Code 5-14-5-8 requires that I immediately forward a copy of any properly filed formal complaint to the public agency that is subject to the complaint. I do so with this opinion. Normally, the complaint is forwarded to the public agency before an opinion is composed in order that the agency be afforded an opportunity to respond and to facilitate resolution of the complaint. While the Town may certainly prepare and file a response to the complaint, its response is unnecessary to resolution based on a plain reading of the statutes at issue and the facts asserted in the complaint.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. IC 5-14-3-3(a). A written record request is entitled to a written response, and if a public agency denies a record request it is very expressly required by the statute to set forth the specific statutory exemption authorizing its nondisclosure. IC 5-14-3-9(c)(2)(A).

The Town's June 8, 2004, letter denies your request for time cards claiming them "not public record[s]." They in fact are. Indiana Code 5-14-3-2 defines "public record" very broadly. Essentially, a public record is any record in whatever form that is created, received, retained or maintained by a public agency. IC 5-14-3-2. In short, if a public agency has it, it is a public record.

However, just because a record is a "public record" for the reason that it is maintained by a public agency, does not mean that the public record is subject to disclosure. In other words, you are not entitled to see every public record of a public agency. A public employee's medical record, for example, is a public record of the public agency employer, but it is confidential and protected from disclosure under multiple state and federal laws. *See* IC 5-14-3-4(a)(1), (a)(3), (a)(9). Indeed, there are 31 categories of exemptions to disclosure of public records that were recognized by our state legislature and made part of the APRA. While a public agency is afforded with the right and, in many cases, the absolute responsibility to withhold certain records from disclosure (*see* IC 5-14-3-4(a)), it may not exercise those rights and responsibilities without informing you of the specific statutory exemption that it relies on to support its nondisclosure. IC 5-14-3-9(c)(2)(A).

Here, the Town withheld time cards. The Town claimed these records to be for "internal use only." The Town did not cite to the specific statutory exemption that supports its nondisclosure. The Town's failure to cite to the statutory exemption supporting its nondisclosure is a violation of the APRA. IC 5-14-3-9(c)(2)(A).

While it does not matter to the violation noted above, neither did the Town otherwise state in any narrative form what statutory exemption applies to exempt these records from disclosure. It may well be that the record requested falls within one of the 31 statutory exemptions recognized by the legislature; however, it is not obvious to me that it would fit within any of them. For example, one exemption to production is personnel file information of public employees. IC 5-14-3-4(b)(8). The Town does not assert that time cards are personnel file information. While I do not now hold that they are not, I do note that these kinds of records are not typically kept as personnel records, but rather as accounting, finance or payroll records and thus not subject to nondisclosure under the personnel files exemption. That said, it is the public agency's burden (and right) to assert and "prove[] that the record falls within" one of the categories of exemption and to "establish[] the content of the record with adequate specificity and by not relying on a conclusory statement or affidavit." IC 5-14-3-9(g). It may be that the

Town can meet this standard with respect to an employee time card, but that is what it must do if it maintains its position and seeks to withhold that record.²

CONCLUSION

For the reasons set forth above, I find that the Town violated the APRA when it partially denied your record request and failed to cite to the specific statutory exemption supporting its nondisclosure. The Town should either produce the records at issue or provide you with an adequate denial under the statute so that you may pursue your further any further remedies as appropriate.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Amy L. Magana

² Even if the record is not exempt under the personnel file information exemption, certain information on the record might be subject to nondisclosure under another exemption. For example, the time card may contain information regarding disability, ADA or FMLA, or other use of other benefits. Still, if a public record contains disclosable and nondisclosable information, the public agency is required to separate the nondisclosable information (*e.g.*, through redaction), and produce the record. IC 5-14-3-6(a).