

March 22, 2006

Sent Via Facsimile

Traci Moyer
Daily Reporter
22 W. New Road
Greenfield, IN 46140

Re: Formal Complaint 06-FC-40; Alleged Violation of the Access to Public Records Act by the Greenfield Police Department

Dear Ms. Moyer:

This is in response to your formal complaint alleging that the Greenfield Police Department (“Department”) violated the Access to Public Records Act by failing to disclose a record pertaining to past disciplinary action against a police officer. I find that the Department denied a record in violation of the Access to Public Records Act.

BACKGROUND

On February 17, 2006, Reporter Jane Hodson gave Greenfield Police Chief Clarke Mercer a written request for “All records pertaining to disciplinary actions against Officer Toby Holliday.” When the request was made, Chief Mercer hand wrote the message “Denied – Nothing and no formal action has occurred. Resubmit after BOW [Board of Works] meeting if deemed necessary.” On February 21, the *Daily Reporter* again requested information on disciplinary actions after the newspaper obtained a police report from the town of Cambridge City involving officer Toby Holliday. You allege that Chief Mercer, upon learning that the newspaper had a police report, stated that he could not remember what disciplinary action was taken, but it was in Holliday’s personnel file and he would have to look it up. The *Daily Reporter* obtained from the Greenfield Clerk Treasurer’s office memos from Mercer to the Clerk Treasurer regarding two incidents of discipline against Officer Holliday, both involving suspensions in 2002. You allege that you were denied a record in violation of the Access to Public Records Act.

I sent a copy of your complaint to the Department. Police Chief Mercer responded by letter, a copy of which is enclosed for your reference. Chief Mercer stated that when he received the written request from Reporter Hodson, it had followed a conversation regarding ongoing actions against Officer Holliday that were not yet concluded. Chief Mercer gave only a cursory read of the request and wrote the “denial” language on it cited above. Chief Mercer concedes that the request was for any and all past events of discipline.

Chief Mercer recounted that the February 20 request was submitted via hand-delivery on a holiday for administrative personnel, and that the request was placed in his mailbox. On February 21 when he discussed the request directly with you, Chief Mercer told you he would respond within 24 hours. Chief Mercer does not agree that he produced the documents only after he learned that the newspaper had independently obtained the information. He stated that “I’m unaware of any obligation on our part to advise them or anyone else of any administrative discipline that falls within the scope of authority of the Chief of Police to administer against an employee.”

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). A public agency may deny a written request for a record if the denial states the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

Personnel files of public employees and files of applicants for public employment may be excepted, except for:

(A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) Information relating to the status of any formal charges against the employee; and

(C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

IC 5-14-3-4(b)(8).

Therefore, a public agency is required to disclose a record concerning “the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.” Hence, the record of the suspensions that were taken against Officer Holliday in 2002, which were responsive to the written request of Jane Hodson, were final disciplinary actions in which final action had been taken and that resulted in the employee being suspended. The Department should have disclosed those suspensions to you in due course. Instead, the Department denied you the request without citing any authority for the denial. While it appears that Chief Mercer did not believe he had responsive records because he believed the subject of the written request was about an ongoing action, the Department is not excused from addressing a clearly written request for a record and responding appropriately.

Although Chief Mercer does not specifically state why he is unsure of the nature of the Department's obligation, I take it that his question is whether "final action" includes administrative action that the Chief takes as opposed to disciplinary action taken by the governing body of the Department, the Board of Works, or some other body. I do not read into IC 5-14-3-4(b)(8)(C) any construction that would limit "final action" to only an action taken by a governing body that has jurisdiction over the individual. There seems to be no question that Officer Holliday had foregone pay on several days in 2002 due to suspension by Chief Mercer. In my opinion, that is "final action" within the meaning of IC 5-14-3-4(b)(8)(C).

CONCLUSION

Because the Greenfield Police Department denied you a record that it is required to disclose, a final disciplinary action in which the officer was suspended, the Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chief Clarke Mercer