



STATE OF INDIANA

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December 31, 2009

Ms. Mary J. Hussein Brown
3620 Piermont Dr.
Apartment L
Indianapolis, IN 46227

Re: Formal Complaint 09-FC-286; Alleged Violation of the Access to Public Records Act by the Indiana Department of Environmental Management

Dear Ms. Hussein Brown:

This is in response to your formal complaint alleging the Indiana Department of Workforce Development ("DWD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you allege that DWD violated the APRA by failing to provide you with access to your personnel file and "personal notebook" following your termination of employment. DWD attorney Bryan Shade responded to your complaint on behalf of DWD. Mr. Shade states that DWD has provided with your personnel file, but it is denying access to your notebook on the grounds that it contains information related to unemployment insurance claimants' names, addresses, and social security numbers, which is confidential information pursuant to Ind. Code § 22-4-19-6 and, therefore, nondisclosable according to section 4(a) of the APRA. You claim, however, that your notebook contains "nothing of a confidential nature or of interest to anyone but [your]self."

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. DWD is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy DWD's public records

during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

I understand that DWD has provided you with your personnel file. The only remaining issue is whether or not DWD violated the APRA when it withheld your notebook. There is a factual dispute between you and DWD regarding the notebook's contents. The public access counselor does not make findings of fact; advisory opinions are based upon the application of the law to the facts presented by the parties. Where the facts are disputed, the public access counselor may issue an opinion based on hypothetical scenarios. If, as DWD claims, the notebook contains confidential information such as unemployment insurance claimants' names, addresses, and social security numbers, DWD was right to deny your request for access pursuant to Ind. Code § 22-4-19-6 and section 4(a) of the APRA. On the other hand, if the notebook does not contain confidential information, the APRA exemption claimed by DWD should not prevent you from accessing the notebook.

CONCLUSION

For the foregoing reasons, I do not have enough information to determine whether or not DWD has properly withheld your personal notebook. It is my opinion that DWD has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Bryan Shade, Indiana Department of Workforce Development