



STATE OF INDIANA

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July 9, 2010

Mr. Michael R. Johnson
408 West Main Street
Bloomfield, IN 47424

*Re: Formal Complaint 10-FC-144; Alleged Violation of the Access to
Public Records Act by Richland Township Fire and Rescue*

Dear Mr. Johnson:

This advisory opinion is in response to your formal complaint alleging Richland Township Fire and Rescue (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Department's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that you requested a number of public records from the Department, including a list of all self-contained breathing apparatuses, testing records for the apparatuses, a roster of members of the Department, and a list of all members with facial hair who could be in violation of safety standards. You state that that request was forwarded to the Department's attorney, who responded and stated that the records would be gathered for your inspection. You subsequently received a message from the Department's chief stating that you could inspect the records at a certain location the following day. You could not attend that inspection, and you claim that you have made several attempts to view the records since that time but the chief has refused you access.

In response to your complaint, Chief Terry Jackson states that the records were available for you to view on March 30th after you stated that you would be available at any time that week to inspect them, but you failed to appear to inspect them at that time. He also states that you have attempted to gain access to records of neighboring fire departments. Chief Jackson notes that the geographical area is close to the Naval Service Warfare Center, Crane Division, and that several loads of cargo containing weapons of mass destruction come through the area. Chief Jackson contacted the Indiana State Fire Marshal and his attorney, who informed him of their opinion that due to the naval base in

the area and the type of information that you were requesting from the Department and surrounding fire departments, the fire marshal and his attorney opined that exposure of the information could expose the readiness of the first responders in the event of a terrorist attack. Chief Jackson consulted with the Office of the Public Access Counselor, which informed him that Counselor Kossack agreed that the release of the requested records related to first responders could expose the area's vulnerability to a terrorist attack. Finally, Chief Jackson claims that you withdrew your request for a roster and a list of employees with facial hair because that information was freely available on the Department's website, which contains photographs of all of the Department's employees.

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. The Department does not dispute that it is 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 the Department'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).

The APRA permits public agencies to withhold records or part of records when the public disclosure of that information "would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack." I.C. § 5-14-3-4(b)(19). Among the types of records that are protected by this exception to the APRA is any record that is "assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism..." I.C. § 5-14-3-4(b)(19)(A). Chief Jackson states that the disclosure of the records you requested relating to the self-contained breathing apparatuses of the Department (and surrounding fire departments) would expose the Department's plans and capability of responding to a terrorist attack. In my opinion, that is exactly the type of record that the General Assembly intended to protect when it excepted from disclosure records that are prepared to mitigate or respond to an act of terrorism. *Id.* Consequently, it is my opinion that the Department did not violate the APRA by refusing to release those records to you.

With regard to your request for a roster and a list of Department employees with facial hair, the Department was not required to provide you with those records if you withdrew your request. Moreover, if the information was freely available on the Department's website, I am not convinced that the Department ever actually denied your request for access to it. If the Department did not deny that aspect of your request, you had no grounds for a complaint about it. *See* I.C. § 5-14-5-6.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Chief Terry Jackson