



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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November 17, 2010

Mr. John J. Morse  
320 N. Meridian St., Suite 506  
Indianapolis, IN 46204

*Re: Formal Complaint 10-FC-249; Alleged Violation of the Access to Public Records Act by the City of Madison*

Dear Mr. Morse:

This advisory opinion is in response to your formal complaint alleging the City of Madison (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of the City's response to your complaint is enclosed.

## BACKGROUND

In your complaint, you note that you represent Patrolman Josh Abbott in this complaint against the City. The complaint alleges that Mr. Abbott requested "the complete copies of the personnel files" for several officers of the Madison Police Department ("MPD"). In response, City Attorney Jason Pattison informed Mr. Abbott that he was entitled to access disciplinary records, but not the entire personnel files of the officers.

Thereafter, Mr. Abbott requested "all disciplinary records from November 1, 2006, through the present for all members of the Madison Police Department." In response, Mr. Pattison produced some records, but Mr. Abbott was not satisfied that the City had produced all responsive documents. Specifically, "additional records identified in the *Lessley, [et al. v. The City of Madison, Indiana, et al.]* case regarding officer Jonathan Simpson and Jamie Royce were not disclosed and should have been." Mr. Abbott notified the City of the perceived deficiencies in the City's response and requested supplementation. Mr. Pattison maintained that the City's response was sufficient, but that if there is something Mr. Abbott believed should be produced he should notify the City of what he is seeking.

In response to your complaint, Mr. Pattison maintains that he has provided all information required to be disclosed under subsection 4(b)(8) of the APRA. Mr. Pattison

claims that the City withheld the nondisclosed records responsive to your request at its discretion pursuant to the same authority.

## ANALYSIS

The public policy of the APRA states, “[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 City does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Personnel files of public employees are generally excepted from disclosure at the discretion of the agency, except for the items specifically required by the APRA to be disclosed. I.C. § 5-14-3-4(b)(8). One of those items is “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.” I.C. § 5-14-3-4(b)(8). However, as Counselor Neal opined,

I.C. § 5-14-3-4(b)(8) does not require an agency to allow inspection of all records related to a personnel action. For instance, I do not think the law would require disclosure of a detailed narrative of the events leading to a suspension or termination. Instead, the factual basis for the action must be disclosed. The agency has the discretion to provide more than that but is only required to disclose the portion of the record identifying the factual basis that lead to the suspension.

*Opinion of the Public Access Counselor 09-FC-175.* I agree with Counselor Neal insofar as I do not believe that the APRA requires public agencies to release every piece of information related to a disciplinary action. That much is clear from the plain meaning of the provision’s language calling for the factual *basis* to be disclosed. Webster’s dictionary defines “basis” as, “(1) That on which anything rests; support; foundation. (2) Fundamental principle. [and] (3) The chief component or ingredient of a thing.” Webster’s Third New International Dictionary 50 (1992). As a general rule of statutory construction, if a statute is unambiguous (i.e., susceptible to but one meaning), Indiana courts give the statute its clear and plain meaning. *Elmer Buchta Trucking, Inc. v. Stanley*, 744 N.E.2d 939, 942 (Ind. 2001). The General Assembly’s choice of that word does not lead me to conclude that every minute detail regarding the discipline should be disclosed; rather, the “chief component” should be. As such, if the City has disclosed the factual basis of the disciplinary actions for its officers within the time period you specified, it is my opinion the City complied with the APRA. The information that does not constitute the “factual basis for a disciplinary action” may be withheld under subsection 4(b)(8), which permits public agencies to withhold “[p]ersonnel files of public employees and files of applicants for public employment....”

CONCLUSION

For the foregoing reasons, it is my opinion that the City 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: Jason J. Pattison