



STATE OF INDIANA

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February 17, 2014

Dr. Josephine Schimizzi
1505 South Spring Street
Mishawaka, Indiana 46544

Re: Formal Complaint 14-FC-22; Alleged Violation of the Access to Public Records Act by the South Bend Civil Rights Commission

Dear Dr. Schimizzi,

This advisory opinion is in response to your formal complaint alleging the South Bend Civil Rights Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Commission was invited to provide a response on February 11, 2014, but has not yet done so as of the date of this Opinion. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 22, 2014.

BACKGROUND

Your complaint dated January 22, 2014 alleges the South Bend Civil Rights Commission violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On October 23, 2013, your attorney requested a number of public records from the Commission. The Commission provided some, but not all of the documents to your attorney on or about November 25, 2013. The Commission's attorney also communicated reasons why other documents were not made available. These conversations were memorialized in a letter dated November 25, 2013 by Ms. Aladean DeRose. It appears as if all disclosable material has been produced by the Commission and given to your attorney. I have not been made aware of any APRA requests made specifically by you.

However, dissatisfied with what your attorney received, you filed a complaint with this Office referenced as 13-FC-351. On January 16, 2014 I issued a letter to you explaining I was declining the request for an Advisory Opinion because I did not believe you had standing to file a complaint, as you were not the one who requested the records. See Ind. Code § 5-14-5-6. As the Commission had already filed a response, I took that into

consideration as well and determined you had not been prejudiced by their action as the documents withheld were deliberative in nature and their release was discretionary.

After considering my response, you filed a subsequent formal complaint which is the basis for this Advisory Opinion. You received from the Commission a one-page witness statement with a redacted black line through one line of information. You seek the redacted information or, alternatively, the statutory authority for withholding that particular information.

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.” See Ind. Code § 5-14-3-1. The South Bend Civil Rights Commission is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Commission’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The document in question is a witness statement with a partial redaction dated September 6, 2013. According to Ind. Code § 5-14-3-9(d), a public agency may deny the request if the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record. Your complaint alleges the Commission “has/had NO legal reason to black this out” and requests the entire file numbered and organized for production.

On December 23, 2013, the Commission sent a letter to your attorney, Mr. Stephen Eslinger, Esq., explaining the reasoning behind not providing all of the requested materials to him. The Commission’s attorney references the September 6, 2013 letter in that correspondence. The Commission reasoned the Federal Department of Housing and Urban Development’s (“HUD”) regulations do not allow the Commission (who is under contract with HUD) to disclose information pursuant to an investigatory file. Furthermore, the Commission argued that Ind. Code § 5-14-3-4(a)(3) prevents disclosure of information required to be kept confidential by federal law.

The December 23, 2013 letter satisfies the requirements of Ind. Code § 5-14-3-9(d). If the statement in question was part of the investigatory material, then the Commission has not violated the APRA.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor