
OPINION OF THE PUBLIC ACCESS COUNSELOR

KEVIN SUMMERS,
Complainant,

v.

CITY OF KOKOMO,
Respondent.

Formal Complaint No.
19-FC-29

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Kokomo violated the Access to Public Records Act.¹ Corporation Counsel Beth Copeland filed an answer on behalf of the Office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 26, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute over personnel records of a former employee.

On February 18, 2019, Kevin Summers (“Complainant”), a retiree of the City of Kokomo as police chief, filed a public records request seeking his personnel file. Four days later, the city provided Summers approximately 420 pages in accordance with his request.

Summers takes exception to the production of documents as not being inclusive of materials provided to other requesters from his personnel file. What those documents are is not specifically identified by the complaint, but allusions to some emails and memos are made. Summers asks this office to adopt a liberal interpretation of the term “personnel file.”

The City of Kokomo asserts that it provided Summers with the entirety of the personnel file and no other records exist in the personnel file responsive to the request.

Summers did follow up on March 15, 2019 seeking additional information that may be outside of a personnel file. The documents provided to other requesters were then provided to Summers.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

2. Access to Employee Personnel Files

Despite the breadth of information submitted to this office by both parties, the issue can be distilled down to an argument about what should and should not be in a personnel file.

While only certain documents contained in a personnel file must be produced to any requester, an employee is entitled to his or her complete personnel file. *See* Ind. Code § 5-14-3-4(b)(8)(C).

The term “personnel file” is not defined by Indiana Code. A plain and ordinary definition may also not suffice as each agency and municipality is unique in terms of personnel management. This is especially so for law enforcement as internal affairs matters often add a layer of bureaucracy to the term.

Expanding the definition of “personnel file” too far sets a dangerous precedent. This office is often asked to adopt a public agency’s argument that a record can be withheld because it is part of a personnel file when the record has nothing to do with the management of an employee. Documentation of benefits enrollment and payroll information are examples of materials that are not part personnel file records even though agencies often claim they are. If agencies were able to shield documents due to inclusion into a personnel

file, file cabinet vendors would find themselves in a very fortunate position.

Thus, it makes sense to keep personnel files relatively succinct. The basic items enumerated in subsection 4(b)(8) belong, as do applications, resumes, evaluations, letters to file, and other materials immediately germane to the business of personnel management.

Other ancillary documents supporting, or not supporting, personnel management can be included at the discretion of the agency. Emails regarding an employee, internal memos, and the like are not required and are optional. Far be it from this office to mandate inclusion of documentation that is not an obvious part of a traditional personnel file.

Therefore, the documents alluded to in the complaint would not typically be included in a personnel file and would not be produced pursuant to a request for a personnel file. It does not appear as if other requesters obtained the information vis-à-vis a simple personnel file request, but asked for more and subsequently got more. And so it goes for the follow-up request on March 15. From the information provided, it does not appear the City denied Summers access to any records that it provided to other requesters.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Kokomo did not violate the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor