

April 17, 2008

Richard McQuaid
6910 Network Place
Indianapolis, Indiana 46278

Re: Formal Complaint 08-FC-84; Alleged Violation of the Access to Public Records Act by the Perry Township (Marion County) Constable

Dear Mr. McQuaid:

This advisory opinion is in response to your formal complaint alleging the Perry Township Constable ("Constable") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by not responding to your request for records. I have enclosed a copy of the Constable's response to the complaint for your reference. It is my opinion the Constable has violated the APRA.

BACKGROUND

In your complaint you allege that you submitted five requests to the Constable for access to records related to employees and associates with badges, homeland security grant request, bids and orders for law enforcement equipment, out of town expenses, and in-town entertaining and fundraising expenses. You made your requests between January 16, 2008 and March 3, 2008. Receiving no response, you mailed this complaint on March 20, alleging denial of access. We received the complaint on March 31.

The Constable responded to the complaint by letter dated April 15 from attorney Henry Dein. Mr. Dein contends the Constable has offered to make his public records available at his office during regular business hours. He further contends the "personnel files are of course not available for inspection."

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

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Constable did not respond to your repeated requests. If the Constable's office received your request for records, and I have no evidence to indicate otherwise, the Constable had a duty to respond to your request within seven days of receipt of the request. I.C. § 5-14-3-9(b). It is my opinion the Constable has violated the APRA by not responding to your requests, thereby denying you access to records.

Regarding the Constable's contention that personnel files are not available for inspection, I would note that many of the records you request certainly seem to fall outside the scope of personnel file records. In fact, of the list of records you requested, it is my opinion none of those fall within the realm of personnel files. And if any of the requested records do fall within the personnel files of the agency, I would caution the Constable that the APRA does not provide a blanket exception to disclosure for personnel files. Within the exception to disclosure for personnel files are three exceptions. In other words, the exception contains a list of personnel file records which must be disclosed upon request. Ind. Code § 5-14-3-4(b)(8) provides the following are excepted from disclosure:

- (8) Personnel files of public employees and files of applicants for public employment, except for:
 - (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
 - (B) information relating to the status of any formal charges against the employee; and
 - (C) 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.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

I.C. § 5-14-3-4(b)(8).

To the extent any records you request fall within the exception to the exception for personnel file records, the Constable must disclose those records. Regarding the remaining records you have requested, it is my opinion the Constable must either provide you access to

inspect and copy those records or provide the statutory authority allowing him to deny access to those records. *See* I.C. I.C. § 5-14-3-9(c).

CONCLUSION

For the foregoing reasons, it is my opinion the Perry Township Constable violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Roy Houchins, Perry Township Constable