



# STATE OF INDIANA

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May 6, 2009

John Hash  
1644 Midland Drive  
Franklin, Indiana 46131

*Re: Formal Complaint 09-FC-112; Alleged Violation of the Access to Public Records Act by the City of Franklin*

Dear Mr. Hash:

This advisory opinion is in response to your formal complaint alleging the City of Franklin ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the City's response to the complaint is enclosed for your reference. It is my opinion the City did not violate the APRA by denying you access to deliberative materials. But to the extent any of the requested records are maintained as personnel files related to your employment, those records should be disclosed to you.

## BACKGROUND

You allege that more on March 31, 2009 you appeared in person to request access to records maintained by the City. On April 1 you received a response from the city attorney. You received further correspondence from the City on April 29. In that letter, the city attorney denied you access to the records, indicating the records are personnel records related to your employment status, wages, and benefits. You submitted this request on April 30, alleging you have been denied access to public records. You requested priority status for the complaint, pursuant to 62 IAC 1-1-3. Because you have alleged you need the records for a proceeding before another agency, priority status was granted. This means my opinion is due within seven days of receipt of the complaint rather than the standard thirty days.

The City responded to the complaint by electronic mail message dated May 6 from City Attorney Robert H. Schafstall. The City contends any correspondence you have requested, if it exists, is intra-agency deliberative material and as such may be withheld from disclosure pursuant to I.C. § 5-14-3-4(b)(6). Further, the City contends that the records are contained within the personnel files of the City and are nondisclosable pursuant to I.C. § 5-14-3-4(b)(8).

## 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 is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the City 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).

The City has denied you access to the records on the basis of two exceptions to disclosure found in the APRA: the deliberative materials and the personnel files exceptions. The deliberative materials exception can be found at I.C. § 5-14-3-4(b)(6):

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

...

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

The deliberative materials exception requires that the records be expressions of opinion or speculative in nature *and* communicated for the purpose of decision making. To the extent the correspondence you requested fits both criteria, the records may be deliberative material, which means that pursuant to I.C. § 5-14-3-4(b)(6) the City has the discretion to withhold those records from disclosure.

But to the extent the records, whether deliberative or not, are maintained as personnel files related to your employment, those records must be disclosed. Generally, personnel files of public employees are excepted from disclosure at the agency's discretion:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

...

(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).

As I indicated, personnel files of public employees generally are excepted from disclosure at the discretion of the agency. Certain records or information contained in personnel files must be disclosed to any person who requests such. *See* subsections 8(A) to (C). You will note, though, that just after subsection (C) is an important clause when we consider the present issue: *all personnel file information shall be made available to the affect employee . . .* I.C. § 5-14-3-4(b)(8), emphasis added. Pursuant to this provision, the City must provide to you, upon request, a copy of your entire personnel file. The City has indicated records responsive to your request are contained within personnel files. To the extent those records are maintained in the personnel file related to *your* employment, those records must be disclosed to you, regardless of whether they are deliberative. To the extent any responsive records are maintained as any type of record other than personnel files (e.g. agency legal files or fact-finding files), and the records fit the criteria for deliberative materials, those records may be withheld from disclosure pursuant to I.C. § 5-14-3-4(b)(6).

## CONCLUSION

For the foregoing reasons, it is my opinion the City did not violate the APRA by denying you access to deliberative materials. But to the extent any of the requested records are maintained as personnel files related to your employment, those records should be disclosed to you.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Robert H. Schafstall, Custinger and Schafstall  
Janet Alexander, City of Franklin