

January 18, 2008

Devin Brubaker
2015 South Third Street
Niles, Michigan 49120

Re: Formal Complaint 08-FC-16; Alleged Violation of the Access to Public Records Act by the City of South Bend

Dear Mr. Brubaker:

This is in response to your formal complaint alleging the City of South Bend ("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 your complaint is enclosed for your reference. It is my opinion the City has not violated the APRA.

BACKGROUND

In your complaint you allege that you submitted a request to the City for copies of employee disciplinary notices, witness statements, and supporting documentation involving the suspensions of two City employees. You allege that the summary statement you were provided does not meet the disclosure requirements found in I.C. §5-14-3-4(b)(8)(C). You mailed this complaint on December 18, 2007, and I received it on December 21. You submitted an identical complaint on December 31. The two complaints are addressed as one in this opinion.

The City responded to your complaint by letter dated December 26 by Thomas Bodnar, Assistant City Attorney. Mr. Bodnar contends that the information provided to you was the factual basis for disciplinary action as required to be provided pursuant to I.C. §5-14-3-4(b)(8)(C).

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." 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. 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).

Personnel files of public employees are generally excepted from disclosure except for certain information which must be disclosed, including “the factual basis for 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)(C). The City provided you with a summary statement of the factual basis for disciplinary action taken against the two individuals about whom you requested information.

You requested copies of employee disciplinary notices, witness statements, and supporting documentation involving the suspensions of two City employees. To the extent any of those records contain the factual basis for the disciplinary action, that portion of the record would be required to be disclosed under I.C. §5-14-3-4(b)(8)(C). Any other information contained in those personnel file records and not expressly required to be disclosed may be withheld from disclosure at the discretion of the agency. I.C. §5-14-3-4(b)(8). If there are records you have requested which contain the factual basis for disciplinary action and the City has not provided that information to you, the City has a duty to do so. It is my understanding, though, that what the City has provided you represents all records contained in the personnel files relating to the factual basis for disciplinary action against the two individuals.

CONCLUSION

For the foregoing reasons, it is my opinion the City has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Thomas Bodnar, Assistant City Attorney, City of South Bend