



STATE OF INDIANA

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December 11, 2013

Steve D. Carlisle
32885 Cardinal Ct.
New Carlisle, IN 46552

Re: Formal Complaint 13-FC-325; Alleged Violation of the Access to Public Records Act by the New Carlisle Public Library

Dear Mr. Carlisle,

This advisory opinion is in response to your formal complaint alleging the New Carlisle Public Library ("Library") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Library responded to your complaint via Ms. Andrea Halpin, Counsel for the Library. Her response is enclosed for your review. 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 November 14, 2013.

BACKGROUND

Your complaint alleges the New Carlisle Public Library violated the Access to Public Records Act by denying producing records responsive to your request.

On November 8, 2013, you submitted to the Library a request for a copy of video footage captured on the Library's security system. The footage allegedly depicted two Library Trustees and another employee remaining in the Library after hours. On November 11, 2013, the Library responded that the records (video footage and still images) could not be disclosed because it was determined to be library or archival records which could be used to identify any library patron which would be protected from disclosure under Ind. Code § 5-14-3-4(b)(16).

On November 12, 2013, you followed up with the Library and speculated the video footage was not of Library patrons, but rather employees and Trustees of the Library. You then conceded that if any Library patrons were present, you would withdraw the request. The Library then denied the request again on November 13, 2013 arguing that the Trustees and employees could be considered patrons and therefore the videos and still images could not be released.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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 New Carlisle Public Library 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 Library’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 Library relies on Ind. Code § 5-14-3-4(b)(16) to withhold records which might identify patrons of a library. They argue that the Trustees and the employee are potential patrons of the Library and therefore the footage cannot be disclosed. The words “library patron” or “patron” are not defined in Indiana Code. Under Ind. Code § 36-12-1-8(c), library services include (1) collecting and organizing books and other library materials; And (2) providing reference, loan, and related services to library patrons.

Clearly the exception in Ind. Code § 5-14-3-4(b)(16) is meant to protect library patrons who are utilizing the services of a library *as a patron*. The Library argues that because the Trustees and the employee are former or potential patrons, then the video footage capturing their identity is exempt from disclosure.

I disagree. Simply stating that library video footage depicting the identity of an individual falls under the exception is erroneous. Unless the footage demonstrates the individuals carrying out an *activity that a typical patron would engage in*, then it would not fall under the exception. Although I am not a finder of fact and have not reviewed the footage in the camera, it seems unlikely the three individuals were engaging in normal library patron activities. Therefore, the footage would not *identify* them as patrons, but merely as persons in the building.

Alternatively, the Library maintains the video footage is exempt from release because it falls under Ind. Code § 5-14-3-4(b)(10) as it is “administrative or technical information that would jeopardize a record keeping or security system”. Video footage alone does not intrinsically trigger the exemption which would compromise the integrity of the system as a whole. Without any additional evidence, I do not find the Library’s argument compelling.

The Library's response does allude to an investigation of the activity which may lead to disciplinary action against the employee. While personnel files are generally exempt from disclosure under Ind. Code § 5-14-3-4(b)(8), I cannot give credence to this argument because the video footage did not originate from a personnel file. The purpose of the surveillance mechanism is not solely intended to observe employee activity, but to keep watch over the safety of the building. Although the video may have been scrutinized ultimately to determine employee discipline, it does not fall under the umbrella of a "personnel file" as the APRA intends.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the New Carlisle Public Library violated the Access to Public Records Act by denying the release of the video footage.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Andrea Halpin, Esq.