



# STATE OF INDIANA

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July 29, 2008

Joseph Williams-Bey  
DOC #910763  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 08-FC-170; Alleged Violation of the Access to Public Records Act by the Elkhart City Police Department*

Dear Mr. Williams-Bey:

This advisory opinion is in response to your formal complaint alleging the Elkhart City Police ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to your complaint is enclosed for your reference. In my opinion, the Department violated the APRA by failing to include a statement of the specific exemption or exemptions withholding all or part of the public record.

## BACKGROUND

In your complaint you allege you requested from the Department access to records related to a specific individual. The Department sent you a letter dated June 25, 2008 indicating that any documents related to the individual are from a time when personal information was included in them and as such would not disclose the records on advice from the legal department. You filed this complaint on July 9.

The Department responded to the complaint by electronic mail message dated July 25 from City Attorney Amber Bressler. The Department contends that the only record it maintains related to the individual is a confidential record exempt from disclosure pursuant to I.C. § 5-14-3-4.

## 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 Department is 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

Department 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).

When an agency denies access to a request the agency received in writing, the denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record. *See* I.C. § 5-14-3-9(c). Here, the Department only indicated to you that the records contain personal information. In the response to me, the Department contends the record at issue is confidential but does not cite any specific exemption and instead provides the general section of the APRA which requires the Department to keep certain records confidential. It is my opinion the response from the Department is insufficient under the APRA because it does not contain a statement of the *specific* exemption or exemptions authorizing the withholding of all or part of the public record. As such, it is my opinion the Department violated I.C. § 5-14-3-9 in its response.

Regarding the substance of the denial, the Department contends in the response to you that the records are from a time when personal information was included in the records. No specific exemption in the APRA allows withholding of records on the basis that “personal information” is contained therein. There are certain provisions exempting from disclosure certain information that is often considering personal in nature, such as the mandatory exemption for the social security number of an individual contained in the records of a public agency. *See* I.C. § 5-14-3-4(a)(12). Further, records declared confidential by state statute or required to be kept confidential by federal law are required to be withheld from disclosure. *See* I.C. § 5-14-3-4(a)(1) and (3). But no specific exemption exists allowing an agency to withhold a record on the basis it contains “personal information.”

Further, to the extent a record contains disclosable as well as nondisclosable information, the agency is required to separate the disclosable information and make it available. I.C. § 5-14-3-6. Since I have no information regarding what portions of the record the Department claims is exempt from disclosure, I cannot provide an opinion regarding whether all or part of the specific record should be disclosed.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the APRA by failing to include a statement of the specific exemption or exemptions withholding all or part of the public record.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Amber Bressler, Elkhart City Attorney