

June 17, 2004

Mr. Donald E. Mullendore
118 Church Street
P.O. Box 195
Gosport, Indiana 47433

*Re: 04-FC-94; Alleged Violation of the Access to Public Records Act by the
Town of Gosport*

Dear Mr. Mullendore:

This is in response to your formal complaint alleging that the Town of Gosport (Town) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied you access to public records. For the reasons set forth below, I find that the Town's response to your record request did not violate the APRA.

BACKGROUND

On March 4, 2004, you made a complaint to the Town against a Town employee. Specifically, you complained that the town marshal initiated two traffic stops against you without cause to do so. Your complaint was written on a town form styled "Customer Action Request." You subsequently made a request to the Town for a response to that complaint. You do not state whether you made the request orally or in writing, or when you made that request, and your complaint does not include a copy of any written request. Neither is it clear from your complaint or the supporting documents whether you were requesting a copy of a record, or merely an answer from the Town on your allegations. In any event, it appears that your request was made orally inasmuch as you reference a May 17, 2004, conversation with a Town official wherein you sought a response to your complaint against the employee, and you provide a copy of the Town's written response to your request wherein the author references your "conversations" regarding the complaint. The Town's written response, dated May 22, 2004, informs you that "no harassment was found on behalf of [the] Gosport Town Marshal." That letter also indicates that a written report on your complaint was made part of the town marshal's personnel file and would not be released. On May 27, 2004, you wrote the Town clerk contesting the Town's failure to provide you with the report and asserting your entitlement to that document under Indiana Code 5-14-3-4(b)(8)(B), which provides that any person is entitled to information relating to the status of any formal charges pending against an employee. This public records

complaint followed.¹ Your complaint asserts that the Town's failure to provide the report violates your right to information regarding the status of any formal charges pending against the town employee at issue.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. IC 5-14-3-3(a). One exemption to production is personnel file information of public employees. IC 5-14-3-4(b)(8). However, this discretionary exemption is subject to exceptions for three categories of information that are required to be disclosed upon request. Relevant to this opinion is the provision for the mandatory disclosure of "[i]nformation relating to the status of any formal charges against the employee." IC 5-14-3-4(b)(8)(B). Notwithstanding the general exemptions available to permit a public agency to withhold personnel file information, a public agency must disclose this information when requested.

In my opinion, Indiana Code 5-14-3-4(b)(8)(B) does not require that the Town provide you with a copy of the report that was created in response to the personnel complaint you registered against the Town's employee. Your complaint and supporting documents, including the Town's response to your request, establish with sufficient specificity (*see* IC 5-14-3-9(g)) that the report you allege you were improperly denied is a personnel record subject nondisclosure at the Town's discretion. IC 5-14-3-4(b)(8). Neither does the mandatory disclosure exception you rely on compel disclosure of the report. Rather, that provision requires only that the Town inform you of the "*status of any formal charges against the employee.*" IC 5-14-3-4(b)(8)(B) (emphasis added). "When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). In this context, I do not believe that a constituent's complaint about the conduct of a town employee, without more, constitutes "formal charges" under the plain language of the APRA. *See* MERRIAM-WEBSTER ONLINE (<http://www.m-w.com/>, last accessed June 12, 2004) (defining "formal" as "following or according with established form, custom, or rule," and "charges" as "a formal assertion of illegality."). Moreover, even assuming your complaint against this employee constituted a "formal charge" as contemplated by the General Assembly in crafting the mandatory disclosure provision at issue, the Town complied with that requirement in full with its May 22, 2004, letter advising you of the "status" of the complaint, namely, that the complaint was found to be without merit. *See* IC 5-14-3-4(b)(8)(B).

That said, I note that the Town's response to your request, assuming that your request was a proper record request under the APRA (as opposed to a request for action on your

¹ Indiana Code 5-14-5-8 requires that I immediately forward a copy of any properly filed formal complaint to the public agency that is subject to the complaint. I do so with this opinion. Normally, the complaint is forwarded to the public agency before an opinion is composed in order that the agency be afforded an opportunity to respond and to facilitate resolution of the complaint. While the Town may certainly prepare and file a response to the complaint, its response is unnecessary to resolution of your claims based on a plain reading of the statutes at issue and the facts asserted in the complaint.

complaint against the employee), was nonetheless deficient. If your request sought a copy of the report at issue, or any other record identified with reasonable particularity, the Town was required to support any denial with written citation to the specific statutory exemption supporting the denial. IC 5-14-3-9(c)(2)(A). While the Town's May 22, 2004, letter declined to produce any report that was written regarding your complaint because it was part of an "employment file," that statement falls short of the statutory requirement for the Town's response to a record request. However, as noted above, it is not clear from your complaint and supporting materials that you made a record request for this report. If you did, it is my opinion that the Town's response was deficient for lack of citation even if its nondisclosure was otherwise appropriate. I decline to make that finding on the record presented.

CONCLUSION

For the reasons set forth above, I find that the Town did not violate the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Jodi Hester