



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

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November 30, 2005

Vincent Robinson  
1301 Lafayette St. Ste 202  
Fort Wayne, IN 46802

*Re: Formal Complaint 05-FC-230; Alleged Violation of the Access to Public Records Act by the City of Fort Wayne*

Dear Mr. Robinson:

This is in response to your formal complaint alleging that the City of Fort Wayne ("City") violated the Access to Public Records Act ("APRA") by denying you access to public records.

### BACKGROUND

On November 1, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-230. You requested priority status for your complaint; priority status was not granted because you failed to allege circumstances that would make your complaint qualify for priority status pursuant to 62 IAC 1-1-3. Additionally, you named the City of Fort Wayne Legal Department ("Legal Department") as the agency that denied your request. The Legal Department is not a public agency. The public agency that denied your request is the City; the Legal Department responded to your request on behalf of the City. Therefore, this office has restyled your complaint to be against the appropriate agency, the City.

On October 28, 2005 you requested records from the Fort Wayne Parks and Recreation Department ("Department"). The records you requested were a list of Department employees working at the Department's main offices, the job title, start date, salary, race and age of each employee. On November 1, 2005 Associate City Attorney Carol Taylor responded that, "[p]ursuant to Indiana Code 5-14-3-4(b)(8) the city will not provide the employees' race or age."

Ms. Carol Taylor responded to your formal complaint by letter dated November 16, 2005. Ms. Taylor stated that an employee's date of birth is only maintained in the employees' personnel files and, therefore, the Department denied your request pursuant to IC 5-14-3-4(b)(8). Regarding the race of employees, Ms. Taylor stated that at the time of the response to your request it appeared that the only location where such information was maintained was in the employees' personnel files. Upon further research, it was determined that the City of Hammond Human Resources Department maintains an EEO report that contains information about the race

of employees. She stated that the City will provide you with a copy of that report. The report does not contain only employees working in the main office of the Department; it includes information regarding all employees of the Department.

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). Under IC 5-14-3-4(b)(8), the personnel files of public employees may be exempted from disclosure at the discretion of the public agency, except for certain information that must be disclosed. Specifically, the public agency must disclose:

- (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.

IC 5-14-3-4(b)(8).

Some of the information that you requested, specifically the age and race of the employees, is not among the information from a personnel file that is required to be disclosed by the agency. Therefore, if the age or race are contained in the personnel file the agency may, at its discretion, refuse to disclose the information to you. Ms. Taylor has indicated that the date of birth of the employees is only maintained in the personnel file of the employee. Therefore, the Department is not required to disclose an employee's age or date of birth to you.

Ms. Taylor has since learned that, while the information regarding the race of the employees is maintained in the personnel file, the agency also maintains a non-personnel file record that includes that information. She is willing to provide the EEO report to you. The Department's failure to disclose this record to you upon your initial request was a violation of the Access to Public Records Act.

Additionally, Ms. Taylor noted that the EEO report is not broken down into specific offices within the department; rather, it includes information regarding all Parks and Recreation Department employees. The City is not required to create a record to respond to a request for records; it must only provide those records that it maintains.

Finally, I note that the personnel file exemption 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. IC 5-14-3-4(b)(8). Therefore, the City was not required to provide you with any personnel file information on a group of employees that were not particularized by name. However, it appears that the City chose to provide some of the

personnel file information that you requested although your request was not particularized by employee name.

### CONCLUSION

For the foregoing reasons, I find that the City of Fort Wayne did not violate the Access to Public Records Act when it denied disclosure of information maintained in its personnel files regarding the age and race of the Parks and Recreation Department employees. The City of Fort Wayne did violate the Access to Public Records Act when it failed to identify and provide the EEO report in response to your request.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Carol Taylor