

August 10, 2006

Warren A. Auxier
P.O. Box 215
Hanover, IN 47243

Re: Formal Complaint 06-FC-119; Alleged Violation of the Access to Public Records Act by the Indiana Department of Labor

Dear Mr. Auxier:

This is in response to your formal complaint alleging that the Indiana Department of Labor (“Department”) violated the Access to Public Records Act by denying you records without identifying the records or parts of the records to which the denial applies. I find that the Department did not comply with the Access to Public Records Act in its denial of your request.

BACKGROUND

You requested of the Department a copy of the case file for the Jefferson County Inspection 309062289, and the case file for the Madison-Jefferson County Humane Society Inspection 309062305. The Department sent an initial response dated May 4, explaining that the Department was filling your request and would provide the documents to you as soon as possible. On May 19, the Department sent you a letter enclosing documents. The letter went on to state: “Please be advised certain material and/or information has been removed or redacted from the documents and not provided (“excepted documents”). This exception is authorized pursuant to Indiana Code 5-14-3-4 (Public Access to Public Records). Such excepted document(s) have not been provided based upon the following authority(ies): (g) the records that are intra-agency documents of a deliberative material that are not disclosable (sic), IC 5-14-3-4(b)(6).”

You followed up this response with a telephone call and letter to the Department asking that the Department clarify what record or records the Department was denying. The agency failed to respond to your request for more clarification, you allege. You filed this formal

complaint, seeking an opinion regarding whether the Department's denial letter of May 19 was consistent with the Access to Public Records Act.

I sent a copy of your complaint to Tim Grogg, Special Assistant Commissioner for IOSHA and Legal Affairs. Mr. Grogg had signed the denial letter of May 19. I have not received a response to my letter requesting a response or to my assistant's telephone calls of July 31 and August 4.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided under section 4 of the APRA. Ind. Code 5-14-3-3(a). This provision is in furtherance of the public policy stated in the APRA that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." IC 5-14-3-1. The APRA is to be liberally construed in favor of disclosure, with the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record. IC 5-14-3-1.

The public agency may deny a request made in writing if the denial is in writing and the denial includes 1) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial IC 5-14-3-9(c).

On July 22, 2005, I issued an informal opinion regarding the Department's response to Ms. Lisa Shidler. Ms. Shidler had raised the same question regarding the adequacy of the Department's denial involving several records and several exemptions. In that opinion, which is posted on my website under 2005 Informal Opinions,¹ I stated that "Implicit in section 9(c) is a requirement that the public agency denying a record state what record it is denying. Otherwise, the required statement of the specific exemption or exemptions authorizing the withholding of '*all or part of the public record*' would have no antecedent and would be bereft of meaning." The basis for my opinion in the informal response of July 22, 2005 is the same for this advisory opinion.

The only difference between the denial violation found in the July 22, 2005 opinion and this denial is that only one exemption was cited for the denial of records that you requested. Nevertheless, it is my opinion that the APRA requires that the agency specify the record or part of the record that is the subject of the exemption. This contemplates that if a letter or memorandum is the record being withheld, for example, the Department would state that "letter of [date] to [name] and from [name] was withheld under [text and citation of exemption]." If part of a record is exempt, the public agency should indicate where material was redacted and give a brief description of the matters being redacted, e.g., "page 2, statements of opinion were redacted under 'Give brief explanation' on form."

¹ For readers of this opinion, please click on this link for the text of that opinion: [Informal Inquiry Response: Alleged Violation of the Access to Public Records Act by the Indiana Department of Labor.](#)

I recommend to the Department that it reconsider its stance that the May 19 denial is adequate, and issue a new denial to you that is in conformance with section 9(c) of the Access to Public Records Act. The Department's continuing failure to issue an adequate denial is a continuing violation of the APRA, actionable under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Department of Labor has violated the Access to Public Records Act by failing to properly deny the record or records under IC 5-14-3-9(c).

Sincerely,

Karen Davis
Public Access Counselor

cc: Tim Grogg