

October 31, 2007

Edward Richards
RR 2 Box 684
Linton, Indiana 47441

Re: Formal Complaint 07-FC-305; Alleged Violation of the Access to Public Records Act by the Greene County CASA Program, a Division of the Greene Circuit Court

Dear Mr. Richards:

This is in response to your formal complaint alleging the Greene County Court Appointed Special Advocates ("CASA") Program, a Division of the Greene Circuit Court ("Program"), violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying your request for records. It is my opinion the Program did not violate the APRA.

BACKGROUND

You allege that you submitted a request to the Program on or about September 10, 2007 for access to your personnel records maintained by the Program. You received a letter from the Program dated September 11 denying you access to the records. The Program cited Administrative Rule 9(G)(2)(b)(iv) in denying you access to the records. You mailed this complaint on October 1, and my office received it on October 3.

The Program did not respond to your complaint at my invitation to do so.

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." Ind. Code §5-14-3-1. The Program is a division of the Greene Circuit Court and as such is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Program 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).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

Records which are declared confidential by or under rules adopted by the supreme court of Indiana are excepted from the APRA and may not be disclosed by the agency unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. §5-14-3-4(a)(8).

Here the Program, which is a division of the Greene Circuit Court, relies upon Rule 9 of the Indiana Rules of Court in denying you access to records from your personnel file. Specifically, the Program relies on Administrative Rule 9(G)(2)(b)(iv), which excludes from disclosure and declares confidential the following:

“records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making, pursuant to Ind. Code § 5-14-3-4(b)(6).”

You disagree with this denial, claiming the intra-agency deliberative material exception cannot be used in this instance because the Program employs only two individuals who work in close proximity to one another. The deliberative material exception in the APRA and in Administrative Rule 9 contains no indication of a threshold minimum number of employees who must be employed by an agency for the exception to be used. If the records at issue here are expressions of opinion or speculative in nature and are communicated for the purposes of decision making, the agency has appropriately used the deliberative material exception to disclosure so long as no other statute requires disclosure.

You claim the personnel records exception applies to the records at issue here. This provision of the APRA excepts personnel records from disclosure at the discretion of the public agency. I.C. §5-14-3-4(b)(8). There is, however, an exception within the exception, requiring the disclosure of certain personnel records. This language, found in I.C. §5-14-3-4(b)(8)(A-C), is mirrored in part in Administrative Rule 9 which declares confidential the following:

“personnel files of employees and files of applicants for employment, except for the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, and dates of first and last employment; information relating to the status of any formal charges against the employee; and information concerning disciplinary actions in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged, pursuant to Ind. Code § 5-14-3-4(b)(8).”

The APRA further provides that “all personnel file information shall be made available to the affected employee or the employee’s representative.” I.C. §5-14-3-

4(b)(8). Since this statute requires disclosure of personnel file information to the affected employee, a rule adopted by the Supreme Court of Indiana cannot except the records from disclosure with respect to an employee or applicant's request for records from his or her own personnel file. I.C. §5-14-3-4(a).

Here, though, I am not convinced the records you request are part of the personnel file of an employee or applicant for employment. The APRA does not define "employee." "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. App. 1998). *The New Illustrated Webster's Dictionary of the English Language* defines "employee" as "one who works for another in return for a salary, wages or other consideration." *The New Illustrated Webster's Dictionary of the English Language* 318 (1992). I have spoken with the CASA Program Coordinator at the Indiana Office of State Court Administration and understand that CASA volunteers are in no way compensated for their services. In some circumstances, volunteers may be reimbursed for mileage, but they do not receive consideration for their services. As such, I do not believe CASA volunteers are employees for the purposes of the Access to Public Records Act.

If CASA volunteers are not employees for the purposes of the APRA, the records you request are not subject to disclosure as your personnel files as an employee or applicant for employee. To the extent records do exist in the Program's office related to the decision to ask you to discontinue your pursuit as a CASA volunteer, those records may be deliberative material so long as the records are expressions of opinion or speculative in nature and were communicated for the purposes of decision making.

CONCLUSION

For the foregoing reasons, it is my opinion the Program did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Kelly Leonhard, Director, Greene County CASA Program