

April 4, 2007

Dave T. Saviola
8600 Maple Avenue
Gary, IN 46403

Re: Formal Complaint 07-FC-59; Alleged Violation of the Access to Public Records Act by the City of Gary

Dear Mr. Saviola:

This is in response to your formal complaint alleging that the City of Gary ("City") violated the Access to Public Records Act by refusing to disclose the home addresses of the city's reserve police officers. I find that the City bears the burden to show that the personnel file exception applies to the members of the city's police reserves.

BACKGROUND

You requested, among other things, the home addresses of the City's police reserves. You take issue with the City's denial of your request for the reason that the home addresses of public employees are exempt under the "personnel file exception" at Indiana Code 5-14-3-4(b)(8). You argue that police reserves are governed by IC 36-8-3-20 which makes those police reserve members volunteers and not public employees.

I sent a copy of your complaint to the City. City attorney Susan M. Severtson provided a response, a copy of which I enclose for your reference. Ms. Severtson argues that although the volunteer police force members are volunteers and not public employees, their status as volunteers makes their personal information off-limits to a person under the Access to Public Records Act. She contends that when a private citizen agrees to volunteer, he or she does not agree to surrender his privacy and personal information as a condition of volunteering. It would be against public policy for the addresses of these volunteers to become public information. The disclosure of this information would have a chilling effect on the willingness of Gary citizens to volunteer for such positions and could potentially place these individuals in danger.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). The APRA places 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; IC 5-14-3-9(g).

Section 4 of the APRA sets forth numerous exceptions to disclosure. The exception at issue in this complaint is that for "Personnel files of public employees and files of applicants for public employment" except for certain information that must be disclosed:

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).

The home addresses of public employees may be withheld in the public agency's discretion. This is because the home address is not among the types of information that must be disclosed to the public. You contend that IC 5-14-3-4(b)(8) does not apply to the information you seek because police reserves are not public employees. You contend that IC 36-8-3-20 makes them mere volunteers, not employees. You also point to the City's ordinance which is captioned "The People's Volunteer Police Force." Gary City Ordinance 36.16.

IC 36-8-3-20 permits counties, towns, and cities to provide by ordinance for any number of police reserve officers. Those officers are appointed by the same authority that appoints regular members of the police department. The officers may receive a uniform allowance, compensation for time lost from other employment because of court appearances, and insurance for life, accident, and sickness coverage. IC 36-8-3-20(f). However, police reserve officers are not eligible to participate in any pension program provided for regular members of the department. IC 36-8-3-20(g). A police reserve officer may be covered by the medical treatment and burial expense provision of the worker's compensation law. IC 36-8-3-20(j).

The term "public employee" is not defined in the APRA. The City appears to concede that police reserve officers are not public employees. The City instead argues for the privacy interests of the volunteer police force.

The public record may not be denied based on the policy arguments set forth by the City. In addition, the argument that the officers are private citizens whose personal information is not

covered by the APRA belies the broad definition of public record, which is “any material that is created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m).

The City must disclose any public record unless the record meets one or more of the exceptions set forth in IC 5-14-3-4(a) or (b). The City may withhold the home addresses of the police reserve officers only if the police reserve officers are within the ambit of IC 5-14-3-4(b)(8). At this juncture, the City has not met its burden to sustain its denial of the record where the City has argued that the information should not be available rather than by asserting any exemption in section 4 of the APRA.

By this opinion, I expressly make no finding regarding whether the police reserve officers are or are not public employees. However, I do not think that the exclusion of police reserve officers as “public employees” as that term is used in IC 5-14-3-4(b)(8) is a foregone conclusion, given the provision of some benefits of public employment to those officers by IC 36-8-3-20. The City should consider the case of *Kennedy v. McCarty*, 778 F. Supp. 1465 (S.D. Ind. 1991) when determining whether the personnel files of police reserve officers are exempt under IC 5-14-3-4(b)(8).

CONCLUSION

For the foregoing reasons, I find that the City of Gary should reexamine its denial of the home addresses of the police reserve officers to determine whether the police reserve officers are public employees whose personnel files are exempt under the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan M. Severtson