



# STATE OF INDIANA

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August 12, 2010

Mr. Michael R. Johnson  
408 West Main Street  
Bloomfield, IN 47424

*Re: Formal Complaint 10-FC-161; Alleged Violation of the Access to  
Public Records Act by the Greene County Ambulance Service*

Dear Mr. Johnson:

This advisory opinion is in response to your formal complaint alleging the Greene County Ambulance Service (the "GCAS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The response from GCAS is enclosed for your review.

## BACKGROUND

In your complaint, you allege that you requested "the following information from the Greene County Ambulance Service: a list of all employees hired by the ambulance service between May 25 and Dec. 1, 2009; their dates of hire; their status as employees; and their ages." You requested no other information from the GCAS. In response to your complaint, you received a letter from the county attorney informing you that you were denied the records because the records "may be in various categories" and because the GCAS does not maintain records as you described them in your request.

In response to your complaint, attorney Marilyn Hartman states on behalf of the GCAS that the GCAS does not possess a list such as you requested. Ms. Hartman claims that if the GCAS maintained such a list, it would have provided it to you in response to your request. She notes, however, that the age of GCAS employees is exempt from disclosure under Indiana Code section 5-14-3-4(b)(8).

## 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.” I.C. § 5-14-3-1. The GCAS does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the GCAS’ public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The GCAS has not violated the APRA by failing to provide you a list of its employees if the GCAS has no such record. As the public access counselor has repeatedly stated, if a public agency has no records responsive to a public records request, an agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

While the GCAS is not required to create a new record in response to a request, it should release public records in its possession if you request those records with reasonable particularity. The APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA’s disclosure requirements, except for:

- (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). Thus, the information referred to in (A) - (C) above should be released to you if you make a specific request for the GCAS’ personnel files. I agree with the GCAS that the ages of its employees are nondisclosable at the GCAS’ discretion.

## CONCLUSION

For the foregoing reasons, it is my opinion that the GCAS did not violate the APRA by failing to create a new record in response to your request. If you submit a specific request for the GCAS' personnel files, the GCAS should release the information required to be disclosed under subsection 4(b)(8)(A) - (C).

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack  
Public Access Counselor

Cc: Marilyn Hartman