



STATE OF INDIANA

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November 13, 2013

Mr. Greg W. Bader
1174 Hinson Road
Martinsville, IN 46151

Re: Formal Complaint 13-FC-297; Alleged Violation of the Access to Public Records Act by the Washington Township Trustee (Morgan County)

Dear Mr. Bader,

This advisory opinion is in response to your formal complaint alleging the Washington Township Trustee (Morgan County) ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Scott Manley, the Township Trustee, has responded to your complaint. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 15, 2013.

BACKGROUND

Your complaint dated October 14, 2013, alleges the Morgan County Washington Township Trustee violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

You allege that on or about October 14, 2013, you were denied access to certain records regarding drug tests for a local township fireman who may or may not have been involved in a motor vehicle accident. You sent this request via email to the township trustee.

The Trustee's response indicates the accident was being investigated and is under review by the safety board. The Trustee also maintains all of the accident reports were provided to you on October 13, 2013. Subsequently, on October 23, 2013 the Trustee denied the portion of your records request regarding the drug and alcohol tests citing Ind. Code § 5-14-3-4(b)(8).¹

¹ Although this denial came after the filing of your formal complaint, it will be addressed in this Opinion.

ANALYSIS

The public policy of the APRA states that “(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.” See Ind. Code § 5-14-3-1. The Washington Township Trustee is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Township’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

All of the Trustee’s acknowledgments and responses were timely. Based on the Trustee’s response, it appears the two of you have been working cooperatively in the past with regard to records issues. The matter at hand involves personnel records of a township employee.

The Trustee is correct in stating that Ind. Code § 5-14-3-4(b)(8) deems the release of certain personnel records to be at the discretion of the public agency. The statute states the release of personnel files of public employees may not be disclosed 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.²

It is unclear from the information provided if there were any formal charges brought by law enforcement, the safety board, or the Trustee against the township fireman in question. If the matter was under investigation and no disciplinary action had yet been issued, then the Trustee satisfied his obligation under the APRA by informing you the accident was under review by the Safety Board. Furthermore, if the fireman were to be suspended, demoted, or discharged, the accident reports would constitute the factual basis

² Emphasis added.

of the disciplinary action. If the factual basis for the disciplinary action was drug or alcohol related and there is documentation containing that information, then it should be released as well. The actual drug and alcohol results themselves would presumably be in the personnel file and are exempt from disclosure.

CONCLUSION

Based on the information provided, the Morgan County Washington Township Trustee has not violated the APRA.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Scott Manley