



STATE OF INDIANA

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February 8, 2013

Mr. Michael Hale
DOC 884687
P.O. Box A
New Castle, Indiana 47362

Re: Formal Complaint 13-FC-42; Alleged Violation of the Access to Public Records Act by the Warsaw Police Department

Dear Mr. Hale:

This advisory opinion is in response to your formal complaint alleging the Warsaw Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lynne LaFollette responded in writing on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted a written request to the Department for the certain employment records for Detective Joe Stanley. The Department denied your request in writing pursuant to I.C. § 5-14-3-4(b)(22). You believe that the Department's denial was improper under the APRA.

In response to your formal complaint, Ms. LaFollette advised that the Department exercised its discretion and denied your request pursuant to I.C. § 5-14-3-4(b)(22) as the records specifically requested sought information concerning an officer of the Department who was working in an undercover capacity at that time. Specifically, Detective Sgt. Stanley was working undercover with the Kosciusko County's Drug Task Force.

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* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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 (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion. However, the required disclosures provided for under (A), would be at the discretion of the law enforcement agency if the request was for a law enforcement officer who is operating in an undercover capacity. *See* I.C. § 5-14-3-4(b)(22). The Department denied your request pursuant to (b)(22) as the specific information your requested for Detective Sgt. Staley was from a period when he was working as an undercover officer with the Kosciusko County Drug Task Force. As applicable here, the Department would have discretion to provide you with the requested information pursuant to I.C. § 5-14-3-4(b)(22) and in my opinion did not violate the APRA in denying your request. *See also Opinion of the Public Access Counselor 07-FC-263.*

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Lynne LaFollette