



STATE OF INDIANA

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March 25, 2013

Mr. James B. Gould
3432 E 800 S.
Star City, Indiana 46985

Re: Formal Complaint 13-FC-77; Alleged Violation of the Access to Public Records Act by the Pulaski County Auditor

Dear Mr. Gould:

This advisory opinion is in response to your formal complaint alleging the Pulaski County Auditor ("Auditor") violated the Open Door Law ("ODL"). Kevin C. Tankersley, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you allege that you submitted a request for records to the Auditor for a copy of employee acknowledgement forms for all employees of the Auditor. On February 28, 2013, Mr. Tankersley denied your request in writing on behalf of the Auditor. Mr. Tankersley advised that, "Personal file information of public employees is exempt from the right to inspect public records unless a specific exception applies. My interpretation of this law is that you are not entitled to the Employee Acknowledgement Forms for all employees as requested in your February 27, 2013 correspondence." You believe that the Auditor improperly denied your request.

In response to your formal complaint, Mr. Tankersley advised that your request did not specify which type acknowledgement form that was sought, nor did you provide the name of any individual employee of the Auditor who had allegedly completed such records. In light of the other complaints filed with the Public Access Counselor's Office, Mr. Tankersley concluded that you wished to obtain employee acknowledgement forms signed by the employees of the Auditor which indicated that each employee had received and read the Pulaski County Personnel Policies Handbook. Mr. Tankersley provided that said forms are a part of each employees' personnel file and the County does not make such records available pursuant to I.C. § 5-14-3-4(b)(8). The acknowledgment forms would not be considered information that is required to be disclosed under I.C. § 5-14-3-4(b)(8)(A)-(C). In addition, the APRA specifically provides that I.C. § 5-14-3-4(b)(8) "does not apply to disclosure of personnel information generally on all employees or for

groups of employees without the request being particularized by employee name.” You request did not identify any individual employee by name and sought all employees of the Auditor.

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 Auditor 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 Auditor’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).

Under the APRA, a public agency denying access in response to a written public records request must put that denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). In response to your original request, the Auditor failed to cite to the specific statutory exemptions that would allow it to withhold the records that had been requested. As such, it is my opinion that the Auditor acted contrary to the requirements of section 9(c) of the APRA by failing to cite to the specific exemption that would allow the agency to deny your request.

As to the substance of your denial, the APRA provides that certain personnel records may be withheld from disclosure:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(8) Personnel files of public employees and files of applicants for public employment, 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.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This

subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) 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. Here, the Auditor has provided that the acknowledgment forms that have been requested are maintained in each individual employee's personnel file. As such, it is my opinion that the Auditor would not violate the APRA by denying your request pursuant to I.C. § 5-14-3-4(b)(8). The Auditor is also correct to note that requests submitted pursuant to I.C. § 5-14-3-4(b)(8) must be particularized by name, whereas your request sought "all employees of the Auditor."

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Auditor acted contrary to the requirements of section 9(c) of the APRA in its original denial of your request. As to the substance of the denial, it is my opinion that the Auditor 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Kevin C. Tankersley