



STATE OF INDIANA

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May 24, 2016

Mr. Theodore Miller
831 Douglas Drive
Evansville, Indiana 47712

Re: Formal Complaint 16-FC-89; Alleged Violation of the Access to Public Records Act by the Metropolitan Evansville Transit System

Dear Mr. Miller:

This advisory opinion is in response to your formal complaint alleging the Metropolitan Evansville Transit System ("METS") and Mr. Rick Wilson violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. METS has responded via Mr. Dirck Stahl, Esq., Corporation Counsel. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 15, 2016.

BACKGROUND

Your complaint dated April 14, 2016 alleges the Metropolitan Evansville Transit System violated the Access to Public Records Act by improperly denying your records request.

On February 20, 2016 you sent a records request to METS, seeking records related to an incident involving METS employees. Your request was acknowledged on February 22, 2016. You received no further communication.

On May 4, 2016 METS responded. METS states it conducted an investigation of the incident and your allegations were found to be meritless. Therefore, no action is needed to be taken. Your complaints against the METS employees have been placed in their personnel files and METS therefore chooses to exercise its discretion under Indiana Code § 5-14-3-4(b)(8).

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 Indiana Code § 5-14-3-1.* The Metropolitan

Evansville Transit System is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy METS's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Within a reasonable time after the request is received by the agency, the public agency shall either provide the requested copies to the person making the request; or allow the person to make copies." Indiana Code § 5-14-3-4(b). If an agency denies a records request, the denial must be in writing or and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and the name and the title or position of the person responsible for the denial. Indiana Code § 5-14-3-9(d).

You admit METS acknowledged your complaint. However, METS did not produce the records to you or give you a legal justification for withholding the records until it responded to your formal complaint. A denial of disclosure must be in writing pursuant to a written request.

Under Indiana Code § 5-14-3-4(b)(8), personnel files are exempt at the discretion of the public agency. However, 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 must be released. METS states no disciplinary action was taken against the employees involved in the incident and therefore no final action has occurred. The mere investigation into a complaint or allegation is not enough to trigger mandatory disclosure.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor that the Metropolitan Evansville Transit System violated the APRA by failing to state a specific statutory justification for its denial in writing; however, METS may ultimately exercise its discretion to withhold the records as part of a public employee personnel file.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Dirck Stahl, Esq.