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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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KEN DE LA BASTIDE,  
*Complainant,*

v.

EDGEWOOD TOWN COURT,  
*Respondent.*

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Formal Complaint No.  
20-FC-97

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Edgewood Town Court violated the Access to Public Records Act.<sup>1</sup> Judge Scott A. Norrick filed a response on behalf of the court. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 22, 2020.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over the access to report issued by the employment attorney for the Indiana Supreme Court.

In June 2020, the Edgewood Town Court Judge Scott A. Norrick enlisted the help of the Indiana Supreme Court to investigate an allegation made by the Madison County Prosecutor that the town court's chief reporter made inappropriate comments about the deputy prosecutor.

After concluding the investigation, the Indiana Supreme Court employment attorney gave Judge Norrick a report of the investigation along with recommendations on how the court should proceed. Specifically, the Indiana Supreme Court office recommended that the Judge terminate the court reporter. At the same time the employee resigned.

On July 15, 2020, Ken de la Bastide (Complainant), a reporter for the *Herald Bulletin*, filed a public records request with the Edgewood Town Court seeking a copy of that report. The court denied the request. As a result, de la Bastide filed a formal complaint with this office on July 21, 2020.

On August 10, 2020, Judge Norrick responded to de la Bastide's complaint. Norrick contends that the court chose not to disclose the report, after consulting with the Public Access Counselor. Pursuant to Indiana Code 5-14-3-4(b)(8) the report is considered nondisclosable because it is part of an employee's personnel file. Also, since the employee resigned prior to being terminated sub-section C of the statute would not apply.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act (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.” Ind. Code § 5-14-3-1. The Edgewood Town Court is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy the court’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

### 2. Personnel files

De la Bastide argues that the report should be made public by town officials.

A report of this nature would be in the context of personnel administration and, more likely than not, become part of the investigated employee’s personnel file.

Indiana Code section 5-14-3-4(b)(8) addresses personnel files and makes their release discretionary on the part of the agency with custody of the file. It is an exception to disclosure but it also has its own set of exceptions. There are several items of information that must be disclosed upon request, but investigative reports are not one of them.

Indeed, Edgewood's Clerk-Treasurer reached out to this office for guidance and I did advise her not to release the document. I do not believe it is the type of document of which the legislature seeks to mandate disclosure. I also confirmed with the State Court Administration that the Supreme Court does not release such reports either.

While it falls squarely within the personnel file exception, it is also likely deliberative material by nature and possibly notes belonging to an investigation, which could potentially be exceptions to disclosure as well. *See* Ind. Code § 5-14-3-4(b)(6), to -(7).

Finally, I do take exception to one comment in the Judge's reply regarding resignation. If the resignation was coerced, forced, or under duress of termination, it is not a true resignation but an involuntary discharge, which would require a factual basis being disclosed. I believe the factual basis for the employment separation is already public, so it may be a moot point but it bears mentioning for future reference.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the public access counselor that the Edgewood Town Court did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

**Luke H. Britt**  
Public Access Counselor