

July 13, 2001

Mr. Martin L. Hensley
15 N. Wood Street
Greenfield, IN 46140

Re: Advisory Opinion 01-FC-37; Alleged Denial of Access to Public Records by the City of Greenfield.

Dear Mr. Hensley:

This is in response to your formal complaint, which was received on July 5, 2001. You have alleged that the City of Greenfield ("City") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you requested access to copies of applications submitted to the City for the position of telecommunications director and were denied access to those public records.¹ Mr. C. Thomas Billings, City Attorney, responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the City's denial of access to the applications submitted for the position of telecommunications director was appropriate. Under Indiana Code section 5-14-3-4(b)(8), public agencies have discretion over the disclosure of information from the files of applicants for public employment, so the failure to provide this information to you upon request did not violate the APRA.

BACKGROUND

According to your complaint, on July 2, 2001, you sent a written request to Mayor Rodney Fleming for copies of resumes, job applications and any agreements or documents concerning the operation of the local "PEGS" channel by the Greenfield Central School Corporation. On that same day, Mayor Fleming responded in writing to your request. Mayor Fleming advised you that the information from the files of applicants for the position of telecommunications director are exempt from disclosure and that they did not have any other documents concerning the school corporation on this matter.

In response to your complaint, Mr. Billings stated that the City does not disclose information from the files of applicants for public employment. The City will release a copy of such applications to the applicant or his or her representative. Mr. Billings also advised me by telephone on July 5, 2001 that any contract that may be entered into by the City with the School Corporation concerning the operation of the "PEGS" channel will be made available, once in existence, upon request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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. Furthermore, "[t]his chapter shall be

liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The City is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Under Indiana Code section 5-14-3-4(b)(8), a public agency does have discretion over the disclosure of information contained in the files of employees or applicants for public employment. In a recent decision, the Indiana Court of Appeals held that, with respect to files of applicants for public employment, the public agency has complete discretion over the disclosure of information from those files. *South Bend Tribune v. South Bend Community School Corporation*, 740 N.E. 2d 937 (Ind. App. 2000). The City, therefore, was justified in its nondisclosure of the applications for the position of telecommunications director. The only suggestion that I would make to the City for future requests is that they include the statutory citation for the nondisclosure, in this case, Indiana Code section 5-14-3-4 (b)(8).

CONCLUSION

It is my opinion that the City of Greenfield did not violate the APRA when it denied access to information from files of applicants for public employment under Indiana Code section 5-14-3-4(b)(8).

Sincerely,

Anne Mullin O'Connor

Enclosure cc: Mr. C. Thomas Billings, Attorney City of Greenfield

¹In your complaint, you also asked a variety of other questions about access to the "PEGS" Channel, but these questions are not within the scope of this Office's responsibilities. For this reason, I have addressed the one state public access law issue stated in your complaint. html>