

September 6, 2001

Mr. Jason A. Smith  
c/o Price & Collins, LLP  
10 Holly Plaza  
P.O. Box 132  
Santa Claus, IN 47579

*Re: Advisory Opinion 01-FC-46; Alleged Violation of the Access to Public Records Act by the Indiana State Police Department.*

Dear Mr. Smith:

This is in response to your formal complaint, which was received on August 21, 2001. You have alleged that the Indiana State Police Department ("ISP") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the ISP improperly withheld a copy of your entire application file, which you requested under the APRA. Mr. Anthony Sommer, Staff Attorney for the ISP, responded in writing to your complaint. A copy of his response is enclosed. For the reasons stated below, it is my opinion that the ISP did not violate the APRA by denying you access to your entire application file.

### BACKGROUND

According to your complaint, on June 27, 2001 you requested a copy of your entire "applicant/personnel file" pursuant to Indiana Code section 5-14-3-4(b)(8). Major Daniel R. Meek, of the ISP, responded in writing that your request for a copy of your application file was being denied pursuant to Indiana Code section 5-14-3-4(b)(8). On July 19, 2001, Mr. Kevin R. Patmore, Attorney, requested on your behalf a copy of your entire application file. On July 30, 2001 Mr. Sommer reiterated Major Meek's position that the ISP had discretion over the release of the record. According to Mr. Sommer, as a "specific exercise of the discretion granted under this section [Indiana Code section 5-14-3-4], the [ISP] promulgated 240 IAC 1-4-22, which prohibits access to background information and character references by an unsuccessful applicant." You then filed a formal complaint with this Office.

Mr. Sommer asserted in response to your complaint that Indiana Code section 5-14-3-4(b)(8) grants public agencies discretion on the disclosure of application file information. The ISP consequently has exercised its discretion and adopted 240 IAC 1-4-22, which provides that "an applicant not subsequently hired may not view the background investigation or the character references." Mr. Sommer also referred to the Indiana Court of Appeals ruling in *South Bend Tribune v. South Bend Community School Corporation*, 740 N.E.2d 937 (2000) in his response. Mr. Sommer stated the holding in this case that Indiana Code section 5-14-3-4(b)(8) does not require that the names of applicants be made available for inspection and copying can be extended to the dispute in your complaint. He concludes that, based upon

the authorities cited, Indiana Code section 5-14-3-4(b)(8) "does not require the release of any specific information concerning applicants, and does not grant a right of inspection to applicants."

## 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." Ind. Code §5-14-3-1. The ISP is clearly a public agency for the purposes of the APRA. Ind. Code §5-14-3-2.

Any person has the right to inspect and copy the public records of the ISP 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). The general rule, therefore, is that a public agency is required to permit inspection and copying of public records under the APRA unless there is a valid statutory exception to disclosure.

You allege in your complaint that you were improperly denied access by the ISP to your application file. You contend that Indiana Code section 5-14-3-4(b)(8) allows you to have access to your entire application file. Indiana Code section 5-14-3-4(b)(8) provides generally that a public agency has discretion in releasing personnel files of public employees and files of applicants for public employment. However, certain information must be made available to the public for inspection and copying<sup>1</sup>, and "all personnel file information shall be made available to the affected employee or his representative." Ind. Code §5-14-3-4(B)(8). It is my opinion that the provision in question does not require that the ISP provide you access to your application file.

The language of Indiana Code section 5-14-3-4(b)(8) provides that "personnel files" and "files of applicants for public employment" are exempt from disclosure at the discretion of the public agency. Clearly, this language indicates that the General Assembly understood that there would be two types of files regarding employment in a public agency; files of applicants for public employment and files of public employees.

While the term "employee" appears to be clear, were it necessary to interpret the APRA to determine what the General Assembly intended this word to mean, courts would rely upon the common and ordinary dictionary meaning. *Crowley v. Crowley*, 588 N.E. 2d 576, 578 (Ind. App. 1992). "Employee" is defined as "one who works for another in return for a salary, wages, or other consideration." NEW ILLUSTRATED WEBSTER'S DICTIONARY OF THE ENGLISH LANGUAGE (1992), 318. On the other hand, "applicant" is defined as "one who applies, as for a position; a candidate." *Id.* at 49.

The General Assembly used only the word "employee" when providing that "all personnel file information shall be made available to the affected employee or his representative" and it did so to the exclusion of applicants for public employment. Ind. Code §5-14-3-4(b)(8). Consequently, only employees are entitled to complete copies of their personnel files information and the public agency has

discretion over the release of all information from files of applicants for public employment. *See, South Bend Tribune v. South Bend Community School Corporation*, 740 N.E.2d 937 (2000). The ISP, therefore, has discretion over the release of information from your application file and the failure to disclose the entire file to you is not a violation of the APRA.

## CONCLUSION

It is my opinion that the Indiana State Police Department's denial of your request for access to a copy of your entire application file did not violate the Access to Public Records Act. While employees are entitled to all the information contained in their personnel file under Indiana Code section 5-14-3-4(b) (8), applicants for public employment are only entitled to the information the public agency exercises its discretion to release.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Anthony Sommer, Staff Attorney

Indiana State Police

---

<sup>1</sup> (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) Information concerning disciplinary actions in which final action has been taken and that resulted in the employee being discharged. html>