
OPINION OF THE PUBLIC ACCESS COUNSELOR

ANN M. SHAMBAUGH; BRITTANY A. CARLONI,
Complainant,

v.

CITY OF CARMEL,
Respondent.

Formal Complaint No.
21-FC-151

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to two formal complaints alleging the City of Carmel violated the Access to Public Records Act.¹ Corporation Counsel Jon A. Oberlander filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion

¹ Ind. Code § 5-14-3-1-10.

to both formal complaints received by the Office of the Public Access Counselor on September 20, 2021, and October 5, 2021.

BACKGROUND

In this case we consider whether the City of Carmel has authority to deny access to an employee settlement agreement in accordance with the Access to Public Records Act's personnel file exception.

On July 12, 2021, Ann Marie Shambaugh (Complainant 1), the Carmel Managing Editor for *Current Publishing LLC*, filed a public records request with the City of Carmel seeking the following:

Any information regarding the terms of a settlement payment from the City of Carmel to Ashley Ulbricht. Date range requested: 5/1/2019-7/12/2021.

Carmel acknowledged Shambaugh's request the same day. On August 3, 2021, Brittany A. Carloni, a reporter for the *Indianapolis Star*, filed a similar public records request with the city seeking, in relevant part, the following:

[C]opies of any settlement agreements, including but not limited to financial settlements, reached with current or former Carmel city employees between Jan. 1, 2021, and June 30, 2021.

Carmel acknowledged receiving Carloni's request the same day. On August 31, 2021, the City of Carmel denied both requests. The City's response to both Shambaugh and Carloni stated, in relevant part, the following:

The City has identified eight (8) pages of records that may be responsive to your request. However, these records all constitute personnel files of a public employee that are exempt from disclosure pursuant to Indiana Code Section 5-14-3-4(b)(8). Therefore, the records will not be released. The City reserves all of its right under law and equity as regards this request and the City's production of records thereunder.

As a result, on September 20, 2021, Shambaugh filed a formal complaint against Carmel alleging the denial violated the Access to Public Records Act. Carloni filed a formal complaint on October 5, 2021. Since these complaints arise out of requests for the same records, this office consolidated this action and solicited only one response from the City.

On October 12, 2021, Carmel filed an answer to the complaints denying any violation of APRA. Essentially, Carmel maintains that the responsive records constitute bona fide personnel files; and thus, the city has discretion to withhold the records from disclosure under APRA.

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 City of Carmel 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 city's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

This case involves the applicability of APRA's personnel file exception to a settlement agreement between a public agency and a former employee.

2. Settlement agreements with former employees

This case involves the applicability of APRA's personnel file exception to a settlement agreement between a public agency and a former employee. The settlement agreement was the result of, and the resolution to, the former employee's grievance against another employee.

To the best of this office's knowledge, the settlement was handled internally and not the result of any court filing or administrative litigation.

Under APRA, a public agency has discretion to withhold from public disclosure an employee's personnel file. *See* Ind. Code 5-14-3-4(b)(8). At the same time, an agency must publicly disclose certain personnel file information. Ind. Code § 5-14-3-4(b)(8)(A) to -(C).

Here, Carmel argues that the responsive records stem from an internal employment complaint made by a city employee. Since the employee chose to resolve the complaint without litigation, Carmel categorized the records as "complaint-

grievance records” and put them in the personnel file of the employee who was the subject of the complaint.

Carmel distinguishes this case from the seminal case *Knightstown Banner, LLC v Town of Knightstown*.² In *Knightstown*, the Indiana Court of Appeals concluded that a settlement agreement created and maintained by an agent of the town, which resolved a civil rights lawsuit with a former employee, was a public record under APRA. In its reversal, the court of appeals, in part, instructed the lower court to order the town to release a copy of the settlement agreement to the requester.

Carmel argues that the *Knightstown* decision did not address whether any of APRA’s disclosure exceptions applied to the settlement agreement; instead, the analysis and holding focused on whether the agreement was a public record for purposes of APRA.

Notably, the Court of Appeals reversed and remanded the case instructing the trial court to enter and order mandating Knightstown receive the settlement agreement from its lawyer and deliver a copy of its settlement agreement with the former employee to the requester.

Additionally, Carmel argues that the more important distinction here is the difference in procedural posture between the city’s complaint-grievance records and the litigation agreement at issue in *Knightstown*. In essence, the city asserts that the Knightstown settlement agreement constituted a legal document that could not fall under the personnel file exception.

² 838 N.E.2d 1127 (Ind. Ct. App. 2005).

This office agrees that the settlement agreement in this case is distinguishable, at least procedurally, from the settlement agreement in *Knightstown* because the agreement here resolves an employee complaint or grievance rather than litigation.

Functionally, however, these settlement agreements are probably not much different from each other. Presumptively, Carmel's settlement with its former employee included compensation to the employee in exchange for releasing the city from liability. If the *Knightstown* court mandated disclosure of a settlement agreement pursuant to litigation, the inclusion of the document in a personnel file does not overcome its functional equivalence.

The primary difference is one settlement agreement resolved litigation and one did not, which Carmel argues allows the city to deny disclosure as a personnel record.

APRA's personnel file exception does not give a public agency discretion to withhold information about compensation paid to an employee. As a result, even if the settlement agreement is properly ensconced in an employee's personnel file because it does not directly resolve litigation, certain information is disclosable upon request in accordance with APRA.

3. Responsive records available elsewhere

In the alternative, Carmel argues that Shambaugh and Carloni can obtain the information they want through different means. Specifically, Carmel asserts that Shambaugh and Carloni can find out if the city paid any money as part of a

settlement agreement by reviewing the claims approved by the city council.

This argument is unpersuasive. A public agency cannot dodge the disclosure requirements of APRA based on the idea that a requester can simply get a public record—or deduce information within it— elsewhere. If that were true, a public agency could deny access to an otherwise disclosable record based on the fact that a requester could just pour over the claims paid by the city council to find out if the expenditure exists. APRA does not work that way. It does force a requester to play detective and deduce information from other sources when it can be easily disclosed otherwise.

CONCLUSION

Based on the foregoing, it is the opinion of this office that compensation paid to a former employee as part of a settlement agreement may not be withheld from disclosure under the Access to Public Records Act's personnel file exception.



Luke H. Britt
Public Access Counselor