

March 18, 2008

Melissa Coxey
Indiana Alcohol and Tobacco Commission
302 West Washington Street; Room E114
Indianapolis, Indiana 46204

Re: Your informal inquiry

Dear Ms. Coxey:

This is in response to your informal inquiry dated March 7, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of the Indiana Alcohol and Tobacco Commission (“Commission”). Pursuant to the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3), the Commission is a public agency. I.C. § 5-14-3-2. Your inquiry relates to personnel records maintained by the Commission as well as test scores of applicants for the position of Indiana State Excise Police Officer. You indicate that in an effort to ensure equitable treatment of all Commission employees, the Commission excepts from disclosure all personnel files except those records required to be disclosed pursuant to I.C. § 5-14-3-4(b)(8).

You further indicate that the Commission has recently received a request for test scores of all applicants for the position of Indiana State Excise Police Officer. You indicate that after reading this office’s *Handbook on Public Access Laws*, the Commission takes the position that test scores are excepted from disclosure at the discretion of the Commission. You indicate you do not “believe the Commission is obligated to alter documents in such a way to be responsive to public records request. . .” You inquire whether the Commission has correctly interpreted the statute and is supported by precedent.

Ind. Code § 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the APRA. Subsection (b) of section 4 contains a list of records which may be withheld from disclosure at the discretion of the agency. As you indicate, I.C. § 5-14-3-4(b)(8) contains a general discretionary exception for personnel files of public employees or applicants for public employment. Within that exception is a list of records which must be disclosed. I.C. § 5-14-3-4(b)(8)(A) to (C). Based on the facts you present, it is my opinion the Commission is

appropriately exercising its discretion by withholding from disclosure records contained in the personnel files of public employees except those records required by I.C. § 5-14-3-4(b)(8) to be disclosed.

Regarding the recent request for test scores of all applicants for the position of Indiana State Excise Police Officer, it is my opinion two subsections of the section 4 may cover those records. First, if the test scores are kept in the individual personnel file of each applicant for employment or each employee, it is my opinion those records are addressed by I.C. § 5-14-3-4(b)(8). Since test scores are not specifically required to be disclosed pursuant the exceptions within the personnel file exception, it is my opinion that test scores of public employees or applicants for public employment may be withheld from disclosure at the discretion of the agency, pursuant to I.C. § 5-14-3-4(b)(8).

Second, the APRA contains a provision that addresses test scores specifically. The following records are excepted from disclosure at the discretion of the agency: scores of tests if the person is identified by name and has not consented to the release of the person's scores. I.C. § 5-14-3-4(b)(4). If the test scores of applicants for the excise officer position are contained in records that identify each test taker by name, it is my opinion the Commission may withhold those records based on this exception. If the applicant is identified in another manner or if the applicant has consented to the release *and* the record is not a personnel file record, it is my opinion the Commission would be obligated to disclose the record(s). I do not understand that to be the case here.

You indicate you do not believe the Commission is obligated to alter documents in a way to be responsive to records requests. Generally, when a record contains disclosable and nondisclosable information, the agency must separate the disclosable information and make it available for inspection and copying. I.C. § 5-14-3-6(a). Here, though, I believe the entire record is the test score information. If that is the case, it is my opinion that I.C. § 5-14-3-4(b)(4) allows the Commission to withhold each entire record. If, however, the test score is listed in some other record not related to the test and the record contains information required to be disclosed (the compensation, job title, and dates of first and last employment, for example), it is my opinion that other information would be disclosable and so, upon request, the Commission could redact the test score information from that record and provide the remaining information.

Finally, you inquire whether the Commission's position is supported by precedent. I find no Indiana cases or opinions from this office related to test scores of job applicants.

Please do not hesitate to contact us if we can provide further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor