
OPINION OF THE PUBLIC ACCESS COUNSELOR

BOB SEGALL,
Complainant,

v.

CITY OF MUNCIE,
Respondent.

Formal Complaint No.
23-FC-106

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the City of Muncie violated the Access to Public Records Act.¹ Attorney Aubrey Crist filed an answer on behalf of the city. 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 October 12, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to public records related to the investigation into allegations of cheating on certification exams within the Muncie Fire Department (MFD) and the city's emergency medical service.

On September 8, 2023, Bob Segall, senior investigative reporter for WTHR-TV, submitted a public records request to the City of Muncie (City) and the MFD for the following:

...[T]o inspect all city reports and findings regarding those allegations of cheating occurring with the MFD and its EMS service. This includes reports and findings from the Muncie Fire Department and any other city agencies/departments that investigated the cheating allegations.

On October 6, 2023, the City—through its human resources department—denied the request citing the Access to Public Records Act's (APRA) deliberative materials exception, attorney work product exception, and other confidentiality provisions. It did state the final disciplinary action would occur in a public meeting, but as of the issuance of this opinion, the employee is on paid administrative leave.

Six days later, Segall filed a formal complaint with this office alleging the City is in violation of APRA.

Specifically, Segall takes exception with the City's denial because it did not explicitly state whether responsive documents exist. Rather, the City ambiguously referenced several exceptions to disclosure without applying them directly to documentation that may or may not have existed. Segall also argues the City has an obligation to separate disclosable from nondisclosable material.

In response to Segall's complaint, Muncie provided an emailed position statement on November 6, 2023. The City reiterates the October 6 denial and contends certain material was disclosed but no other records regarding the personnel investigation are disclosable.

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 Muncie (City) 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 fee schedule compared to a local ordinance.

This dispute arose over APRA's requirements for a legally sound denial as well as information contained in a personnel file.

2. Denials

Segall first takes exception to how his records request was denied, at least in part. He contends the denial was not explicit enough and argues it should have been more specific as to the documents withheld.

A public agency denying access to records has an affirmative obligation under APRA to include a statement of the specific exemption or exception authorizing nondisclosure of all or part of the public record and to state the name and title or position of the person responsible for the denial.²

Here, the City's human resources assistant, Marlene Mitchell, provided a response to Segall's request in the following manner:

The "city reports and findings regarding those allegations of cheating occurring within the MFD and its EMS service" are exempt from disclosure under the following: (1) deliberative materials (I.C. 5-14-3-4(b)(6)), (2) work product of an attorney (I.C. 5-14-3-4(2)), and records declared confidential by state statute and by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute (I.C. 5-14-3-4(a)(1) and (2)). Investigative information leading up to and during a disciplinary matter under the Fire Merit Commission rules are to remain confidential except for a final decision on discipline, which would be approved in a public

² Ind. Code § 5-14-3-9(d).

meeting. The only available records not excepted from disclosure would be the documents previously provided (the findings from the Indiana Department of Homeland Security and NREMT).

Indeed, there are no magic words to make a denial proper under APRA, so long as exceptions to disclosure are explicitly stated along with the name and position of the person responsible for the denial. Both obligations were met by the City in this regard.

APRA does not contemplate an obligation for any kind of privilege log or index as to what documents were withheld and why. In some cases, this office recommends such a log for clarity. Here, however, the records in question – reports and records – appear to be self-contained and are likely a single tranche of documents.

In *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826 (Ind.Ct.App.1998), the Court ratified a public agency's position that some documents naturally fall into an exception as to their entirety: "Therefore, we find no error in Purdue establishing the documents as exceptions as a whole."

A general denial citing exceptions was sufficient. Notably, that case had the benefit of an *in camera* review by the court, as well as a discovery log, something that is not the case here.

Nonetheless, given the nature of the documents requested, as well as the City's response, this office agrees that a reasonable person would conclude that records were denied

and that the exceptions cited cover those records whether their application was appropriate or not.

3. Personnel records

Also at issue in this case is the disclosure of reports and findings leading to a personnel decision. Segall requested the reports that predicated an employee's discipline.

A noteworthy consideration to APRA's general rule of disclosure is the concern for personnel files of public employees. APRA provides public agencies with the discretion to withhold most of these records from public disclosure. *See* Ind. Code § 5-14-3-4(b)(8).

Yet, solidly embedded in the discretionary exception for personnel files of employees and applicants is an exception—to the exception—that mandates disclosure of the following:

- (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) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

Id. In effect, the legislature provided public agencies with the discretion to withhold personnel records of public employees, but not to withhold the information set forth in subsections (A), (B), and (C). That means, upon receiving a proper request, a public agency must disclose the factual basis for a disciplinary action in which final action has been taken that resulted in an employee being suspended, demoted, or discharged.

On the other hand, this also means the remainder of a personnel file can be potentially withheld at the discretion of the employing agency.

Investigations into misconduct are documents that are commonly considered to be part of a personnel file, or at least personnel-file-adjacent. The law does not consider mandatory disclosure of any other material not listed in the three exceptions above.

Segall argues that disclosable material be separated from disclosable information even if this means large portions are redacted.

The Indiana Court of Appeals addressed this issue in *Unincorporated Operating Div. of Indiana Newspapers, Inc. v. Trustees of Indiana University*, 787 N.E.2d 893 (Ind.Ct.App. 2005), albeit in the case of a different exception to disclosure. Nonetheless, the matter considered involved a personnel action:

APRA permits redaction in that it specifically mandates separation of discloseable from non-discloseable information contained in public records containing both. I.C. § 5-14-3-6(a). Therefore, if a public record contains some information

which qualifies under an exception to public disclosure, instead of denying access to the record as a whole, public agencies must redact or otherwise separate those portions of the record which would otherwise render it non-discloseable.

...

By separating disclosable from nondisclosable documentation, it seemingly would solve both problems presented in this case: Muncie preserves any sensitive, discretionary personnel material or work product; and Segall is presented with an idea of how much documentation fell into these exemption categories.

It could very well be, in this context, that Segall receives pages of black ink boxes, nonetheless, as the Court in the aforementioned case explicitly states: “Whether or not this limits the intelligibility of the documents, this is what is required by APRA...”³

³ *Id.* at 909

CONCLUSION

Based on the foregoing, it is the opinion of this office the City of Muncie did not violate the Access to Public Records Act. At the same time the city should consider redactions instead of a blanket denial of all materials.

As a final aside, although this issue was not raised in this case, given the length of time the employee has been on administrative leave—paid or not—the employee has been suspended by any reasonably objective standard. As such, the City of Muncie would be required under APRA to provide a factual basis for the suspension, in addition to the status of any formal charges against the employee.



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