



STATE OF INDIANA

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April 27, 2015

Ms. Cynthia Forbes
Indiana State Police

Re: Informal Inquiry 15-INF-12; EEOC Position Statements

Dear Ms. Forbes:

This is in response to your informal inquiry regarding the release of position statements submitted by a public agency to the Equal Employment Opportunity Commission ("EEOC"). On June 19, 2014, I issued *Opinion of the Public Access Counselor 14-FC-115* in which I stated the Indiana State Police ("ISP") had acted contrary to the Access to Public Records Act ("APRA") for not releasing the position statements upon request.

In *Advisory Opinion 14-FC-115*, I stated:

For the foregoing reasons, it is the Opinion of the Public Access Counselor that EEOC position statements are not attorney work product nor are they attorney-client communication. Their release is not excepted from disclosure by the APRA or any other authority of which I am aware.

Pursuant to Ind. Code § 5-14-3-1 the burden of proof for the nondisclosure of a public record is on the public agency denying the record. At the time of issuing the complaint, I determined ISP had not met that burden based upon their response to a formal complaint alleging an APRA denial. Since that time, ISP has identified authority which it posits is justification for withholding records related to EEOC proceedings.

ISP has identified 29 CFR §§ 1610.17 and 1610.22 as authority. Section 1610.22 specifically indicates Commission records, including position statements, are confidential and not to be disclosed prior to the conclusion of the EEOC investigation. In this case, it matters not that the CFR language is EEOC-specific; the intent of non-disclosure is clear – release of the information would potentially compromise the investigation of the Commission. This is distinguished from other agency-specific confidentiality statutes because position statements are strictly germane to an EEOC investigation; they would not exist but for the filing of an EEOC charge.

Section 1610.17 cites special disclosure rules found in Title VII of the Civil Rights Act of 1964; however, Title VII's provisions also imply EEOC investigatory materials are confidential. The APRA recognizes Federal confidentiality statutes at Ind. Code § 5-14-3-4(a)(3). Position statements therefore are exempt from disclosure under the APRA. The conclusive determination in *Advisory Opinion 14-FC-115* should be ignored in favor of this Opinion.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor