



STATE OF INDIANA

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August 9, 2013

R. Michael Johnson
408 West Main Street
Bloomfield, Indiana 47424

Re: Informal Inquiry 13-INF-46; Alleged Violation of the Access to Public Records Act by the Green County Community Corrections Department

Dear Mr. Johnson:

This informal opinion is in response to your inquiry regarding the Greene County Community Corrections Department ("Department") and its compliance with the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Marilyn A. Hartman, Attorney, responded in writing on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your inquiry you provide that on or about July 1, 2013, you submitted a written request to inspect a large number of personnel files maintained by the Department. The Department informed you that due to the vast nature of your request and that the agency was busy, it would take approximately 60 to 90 days to fulfill your request. You thereafter rescinded your original request and submitted a request to inspect 10 employees' personnel files. The Department informed you that it would take approximately 30 days to fulfill your request. You believe that the time provided by the Department is unreasonable in light of the Department currently being fully staffed and you estimate it would take no more than 15-20 minutes, per personnel file, to redact the information deemed to be confidential. You believe a more appropriate time frame for production would be 10 to 12 days, at most. You believe that the Department is intentionally stalling and attempting to delay a subsequent hearing that the records are needed for.

In response to your inquiry, Ms. Hartman advised that there has been no deliberate attempt by the Department to delay producing records in response to your request. The personnel files requested are maintained by the Department's Director; other than the Director, there is only one other Department employee who is authorized to review or inspect employee personnel files. The Director has the responsibility for operating and staffing a facility that is operational, around the clock, 365 days a year. At

the end of the fiscal year, June 30, 2013, the director had an increased workload in dealing with the reporting requirements to the Indiana Department of Corrections. The Director was on vacation from July 5-11, 2013 and July 22-29, 2013. Further, the Director's administrative assistance was on sick leave from July 16-26, 2013. Accordingly, the timeframe given in response to your request accurately stated the estimated time needed by the Director to locate the personnel files, review and redact said files, and forward the files to the Department's attorney to conduct a final review. Once the review has been completed, you will be promptly notified.

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." *See* I.C. § 5-14-3-1. The Department is considered to be a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

You have requested to review the personnel files for 10 Department employees. The APRA specifically addresses requirements placed on a public agency in regards to information that is to be disclosed from an employee personnel file. Specifically, I.C. § 5-14-3-8 provides that:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(8) Personnel files of public employees and files of applicants for public employment, except for:

(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.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*. Here, as all records maintained by the Board and/or Auditor were provided within eleven days of the receipt of your request, it is my opinion that the agencies complied with section 3(b) of the APRA in providing all records within a reasonable period of time.

As applicable here, the Department advised at the time of your request that it would take approximately 30 days for the agency to fulfill your request to inspect 10 employee personnel files. Ms. Hartman advised that only two employees with the Department are authorized to review personnel files. The Director had previously scheduled two vacations for the month of July, the period in which the Department received your request. In addition to the Director being on vacation, her administrative assistant was on sick leave for a 10-day time period. Along with complying with your

request for records, the Department is also required to provide records in response to all other requests, as well as maintain its normal duties and responsibilities. Ms. Hartman advised that the Department received your request during a busy period for the agency in light of it being the end of the fiscal year and the required reports that must be submitted to the Indiana Department of Corrections. As you have requested access to personnel files, the Department is required to review and redact all information in the file prior to disclosure, in light of the requirements provided under I.C. § 5-14-3-4(b)(8). Ms. Hartman, as the Department's attorney, has advised that she and the Director will be reviewing the files prior to disclosure. In light of all of these factors, it is my opinion that 30 days is a reasonable period of time to produce all records for inspection or copying that are responsive to your request and the Department has complied with the requirements of section 3(b) of the APRA.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Marilyn A. Hartman