

February 4, 2005

Laura D. Steele  
South Bend Tribune  
225 W. Colfax Avenue  
South Bend, IN 46626

*Re: Formal Complaint 05-FC-7; Alleged Violation of the Access to Public Records Act by the Town of Walkerton*

Dear Ms. Steele:

This is in response to your formal complaint alleging that the Town of Walkerton ("Town") violated the Access to Public Records Act ("APRA") by failing to disclose certain personnel file information regarding former Walkerton Chief of Police Richard Bliley. I find that the Town of Walkerton had a duty to disclose the factual basis for any final action in which the Chief was suspended, demoted, or discharged.

#### BACKGROUND

You requested in writing the "personnel records of Walkerton Police Chief Richard Bliley pertaining to the decision not to renew his contract as chief of police." Your letter was dated January 3, 2005. You received a written response from town attorney Fred R. Jones. In his response dated January 10, 2005, he stated that former Walkerton Police Chief Bliley was not disciplined or discharged; his appointment as police chief was not renewed. He further stated that the fact that no hearing was held lends support for the fact that the Town did not have to disclose certain disciplinary information under the Access to Public Records Act.

You filed your formal complaint with my office on January 7, 2005. I sent the Town a copy of your complaint. I received a written response from Mr. Jones, which I enclose for your reference. He reiterates the position of the Town that because Bliley's position was changed from that of police chief to officer, he was not "disciplined or discharged," and you are not entitled to any information from his personnel file.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency, except as provided in section 4 of the APRA. Under Ind.Code 5-14-3-4(b)(8), the personnel files of public employees may be excepted from disclosure at the discretion of the public agency, except for certain information that must be disclosed. That information is in three parts. The third part is the basis for this complaint against the Town.

Under IC 5-14-3-4(b)(8)(C), the agency must disclose: “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.” Hence, there are two prerequisites to the requirement that the Town disclose this part of the personnel file: 1) a final action has been taken; and 2) the final action resulted in the employee being suspended, demoted or discharged.

The parties do not seem to dispute that a final action with respect to Bliley had been taken. In fact, it was taken in a public meeting, allegedly on December 20, 2004. The issue appears to be whether Bliley was disciplined within the meaning of IC 5-14-3-4(b)(8)(C). Mr. Jones states that there was no requirement in the law that Bliley receive a due process hearing as required by IC 36-8-3-4. He claims that this is true because mere reductions in grade of members of a police department who occupied upper level policy making positions may be accomplished without adhering to the statutory due process procedures normally required. IC 36-8-3-4(m); *Olejniczak v. Town of Kouts*, 651 N.E.2d 1197 (Ct.App. 1995). Mr. Jones then argues that no “discipline or discharge” took place. However, those are not the only terms that appear in the personnel file exception. Rather, the Town must disclose the factual basis for any disciplinary action in which the employee was suspended, *demoted*, or discharged.

The Town seems to concede that former Chief Bliley (now officer Bliley) was demoted. Therefore, the APRA requires that the Town disclose the factual basis for his demotion. This is true notwithstanding any procedural process that may or may not be due certain officers.

The Town may discharge its duty to disclose this information by either allowing you to inspect and copy a record that shows the factual basis for the demotion, or it may draft a record that contains that information. *See Opinion of the Public Access Counselor 02-FC-22.*

## CONCLUSION

For the foregoing reasons, I find that the Town of Walkerton violated the Access to Public Records Act when it denied you a portion of a personnel file record that is required to be disclosed. This denial is actionable under IC 5-14-3-9(e).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Fred R. Jones