



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
Toll Free: 1-800-228-6013
Email: pac@in.gov/opac
Website: www.IN.gov/pac

On October 19, 2016, a representative for the Respondent responded to the request with the dates of employment for the employee and salary at time of departure. It was stated, "While it is our practice that we do not discuss personal matters publically I can tell you that there were no formal charges or disciplinary actions against [the employee]". On November 22, 2016, the Complainant sent additional correspondence stating the employee was terminated and requested the release of the basis for the disciplinary action which final action has been taken. The respondent did not give the Complainant any additional information. It should be noted that a staffing report provided by the Respondent clearly indicates the employee's status is listed as "termination" as opposed to "resignation" like other listed employees.

The respondent has replied to the formal complaint with the position that Respondent has complied with the records request by Complainant and has stated there were no formal charges or disciplinary actions against the employee. The Respondent believes the Complainant has drawn an incorrect conclusion as to why the employee is no longer employed at Ivy Tech.

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 Indiana Code § 5-14-3-1*. Ivy Tech Community College is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the Ivy Tech's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Under *Indiana Code. 5-14-3-4(b)(8)* exempts the personnel files of public employees from disclosure except for: (a) the name, compensation, job title, business address, business telephone number, job description... etc. (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 suspend, demoted, or discharged.

Ivy Tech complied with the records request by disclosing the start and end dates of employment along with the salary. This is all mandatory disclosable information under the statute. The Complainant believes there was a denial to access as to the reasoning behind the employee listed as terminated on a personnel activity report. The Respondent contends there are no such records in the personnel file, thus the APRA does not require an agency to create a record if no such record exists.



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A document titled Personnel Activity Report indicates the employee was indeed terminated, as opposed to other employees whose reason for leaving is labeled as resignation. Naturally, this would cause confusion on the part of a reader of this document if the employee merely parted with the agency voluntarily. The Respondent contends "termination" is a term exclusive from being discharged or fired. Termination in a personnel context implies an adverse action taken against an employee, i.e., the employee was discharged. The term "termination" does not suggest a voluntary separation. The statute contemplates the disclosure of this type of information whether the employee violated a policy, was laid off for performance issues, or if the position was eliminated. While there is an expectation of privacy for a civil servant's personnel file, that expectation is divested when an employee is terminated. An employee's dismissal from civil service becomes a matter of public business.

It is clear "termination" and "resignation" are not used synonymously by Ivy Tech; therefore, there must be a factual basis as to why the employee was let go. There are very few instances in the APRA where a public record must be created by an agency pursuant to a request. Indiana Code § 5-14-3-4(b)(8) is one of those instances. Therefore, it is my interpretation the intent of the statute is that documentation should be created whenever an employee is involuntarily separated from an agency.

RECOMMENDATION

Based on the foregoing, it is the Opinion of the Public Access Counselor Ivy Tech Community College should release the factual basis for the termination of the employee.

A handwritten signature in black ink, appearing to read "LH Britt".

Luke H. Britt
Public Access Counselor

Distribution:
Mr. J.D. Lux, Esq.