



# STATE OF INDIANA

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January 11, 2011

Mr. James Phend  
799 Arrowwood Dr.  
Carmel, IN 46033

*Re: Informal Inquiry 10-INF-58; Records regarding City of Carmel*

Dear Mr. Phend:

This is in response to your informal inquiry regarding your records request to the City of Carmel ("City"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I have enclosed the City's response for your reference.

In your inquiry, you ask whether the "attendance records of the [City's] police chief" are accessible under the APRA. My office forwarded a copy of your inquiry to the City, which responded through Assistant Carmel City Attorney Thomas D. Perkins. Mr. Perkins' response states that the only records in the City's possession or control that are responsive to your request are payroll records, but that those records are exempt from the APRA's disclosure requirements pursuant to Ind. Code § 5-14-3-4(b)(8). He also argues that the records you seek constitute the functional equivalent of a diary or journal, which would exempt them from disclosure under Ind. Code § 5-14-3-4(b)(7). Mr. Perkins notes that the City does not have any specific record that is responsive to your request. Rather, the information you seek would have to be recreated from other records that are contained in the City's personnel files.

Generally, personnel files of public employees are excepted from disclosure at the agency's discretion:

(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). Certain records or information contained in personnel files must be disclosed to any person upon request. *See* subsections 8(A) to (C). Although Ind. Code § 5-14-3-4(b)(8)(A) requires an agency to release the compensation and dates of first and last employment of present or former officers of the agency, nothing in subsection 4(b)(8) requires the City to release attendance records of type you seek. Thus, to the extent that the City only maintains records responsive to your request within its personnel files, the City acts within the discretion afforded by the APRA by denying your request.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Thomas D. Perkins