

February 23, 2004

Ms. Patricia G. Barnes

*Re: 04-FC-12; Alleged violation of the Access to Public Records Act by the
Indiana State Board of Law Examiners*

Dear Ms. Barnes:

This is in response to your formal complaint, received on January 22, 2004, alleging that the Indiana State Board of Law Examiners (Board) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your request for access to records pertaining to the Indiana Supreme Court's admission of out-of-state attorneys on foreign license. The Board has responded to your complaint, and a copy of that response is attached for your reference. For the reasons set forth below, it is my opinion that the Board did not violate the APRA when it denied you access to the records.

BACKGROUND

On January 8, 2004, you submitted a written request for records to the Indiana State Board of Law Examiners. That request sought access to records pertaining to the Indiana Supreme Court's admission of out-of-state attorneys on foreign license, including all applications, dispositions, and all materials relating to the application, including materials submitted by the applicant, by the Board of Law Examiners, and by the Indiana Supreme Court. Your request sought responsive records for the period 1995 through 2000, and access to applications from 1995 through the present time.

The Board received your request on January 9, 2004. On January 14, 2004, within the time period required for a response, the Board issued a written letter denying your request. In support of the nondisclosure, the Board cited to Indiana Code 5-14-3-4(a)(8)¹ and Indiana Supreme Court Admission and Disciplinary Rule 19 (Rule 19) (Ind. Admission and Discipline Rule 19). The Board's response to your record request included a copy of Rule 19, which

¹ Actually, the citation was to Indiana Code 5-14-3-4(8). The Board acknowledged the typographical error in its response to your complaint. I do not find the error significant inasmuch as the additional reference to the state supreme court rule made it clear that the nondisclosure was based on the confidentiality of the records as declared by Indiana Supreme Court Rule through Indiana Code 5-14-3-4(a)(8).

provides that “all information and all records obtained and maintained by the Board of Law Examiners in the performance of its duty” shall be held confidential unless otherwise provided by the Rules of the Indiana Supreme Court or by order of that court. Admis. Disc. R. 19(1). Section 2 of Rule 19 identifies but does not limit itself to materials including applications and files of applicants, reports and correspondence regarding the investigations on the applicants, memoranda, minutes and records of meetings and hearing, examination materials, and results. Admis. Disc. R. 19(2). Section 3 of Rule 19 sets forth the authorized disclosures (Admis. Disc. R. 19(3)), none of which were determined to be applicable with regard to your request.

This complaint followed.

ANALYSIS

The public policy of the APRA is set forth in the preamble to that statute, and states:

[I]t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing 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.

IC 5-14-3-1.

You rely heavily on the preamble to the APRA to support your complaint that the Board’s denial is contrary to the law and to the public’s interests. However, your argument does not appropriately lie with the Board’s interpretation or application of the law, but rather with the law itself. In enacting the APRA and the broad policy supporting access to public records, the Indiana General Assembly at the same time acknowledged and determined that public policy required that certain records were appropriate to be maintained as confidential. Indeed, Indiana Code 5-14-3-4 sets forth thirty-one (31) instances in which the public agency must or may withhold disclosure of public records (IC 5-14-3-4), and Indiana Code 5-14-3-3(a) subjects access to public records to the exemptions as set forth in that section (IC 5-14-3-3(a)). Even the preamble you rely on acknowledges that some public records are not subject to disclosure. *See* 5-14-3-1 (“This chapter shall be liberally construed to implement this policy and place the *burden of proof for the nondisclosure of a public record* on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.”) (Emphasis added).

Indiana Code 5-14-3-4(a) sets forth the exemptions to disclosure that are mandatory. That is to say, if the information sought by a request for records falls within one of the exemptions set forth therein, the public agency does not have discretion; it “may not” disclose the records “unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery.” IC 5-14-3-4(a). One of the mandatory

exemptions to disclosure is for those records “declared confidential by or under rules adopted by the supreme court of Indiana.” IC 5-14-3-4(a)(8).

In denying your record request, the Board cited to this provision and Indiana Supreme Court Admission and Disciplinary Rule 19 to support the nondisclosure. Rule 19 expressly declares all of the information and records of the Board confidential, and expressly limits disclosure of that information to certain persons or entities and under limited circumstances. Admis. Disc. R. 19. Your request seeks precisely the records and information that Rule 19 declares to be confidential. Admis. Disc. R. 19(2). Moreover, your request does not fall within any of the recognized exceptions to nondisclosure. Admis. Disc. R. 19(3). Accordingly, the Board’s denial was not contrary to the letter or the spirit of the APRA, but rather adhered to both. Nondisclosure was not, as you argue, “arbitrary,” but rather nondisclosure was *required by the law*. Admis. Disc. R. 19(1). Based on the foregoing, it is my opinion that the Board did not violate the APRA when it denied you access to the records you requested in your January 8, 2004, record request.

Your complaint and your record request indicate your intention to pursue all of your available remedies to gain access to the records. As you know, this opinion is advisory only. You may, of course, pursue a civil action in a court of competent jurisdiction pursuant to Indiana Code 5-14-3-9. Should you prevail in any such action, you would be entitled to your attorney fees based on your attempt to obtain resolution through this office. IC 5-14-3-9(i). However, should the Board prevail in any such action and the court determine that your action is frivolous or vexatious, the court shall award attorney fees to the Board. IC 5-14-3-9(i).

CONCLUSION

For the reasons set forth above, it is my opinion that the Board properly denied you access to the records sought in your record request and did not violate the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Mary Place Godsey