

July 26, 2005

Sent Via Facsimile

Matthew G. Langenbacher
748 Massachusetts Avenue
Indianapolis, IN 46204

Re: Formal Complaint 05-FC-143; Alleged Violation of the Access to Public Records Act by the Town of Fishers

Dear Mr. Langenbacher:

This is in response to your formal complaint alleging that the Town of Fishers (“Town”) violated the Access to Public Records Act (“APRA”) by failing to disclose personnel file information to you. I find that the Town violated the Access to Public Records Act when it denied the records without citing to the specific exemption authorizing nondisclosure, but otherwise did not violate the APRA when it did not produce personnel records.

BACKGROUND

You mailed a public record request to the Town on July 10, 2005. You requested:

- “copies of any disciplinary actions of any Fishers Fire Department firefighter or fire officer of any rank in which final action has been taken and that resulted in the employee being disciplined or discharged for the years 2002, 2003, 2004 and 2005;
- copies of any formal disciplinary charges against any Fishers Fire Department firefighter or fire officer of any rank; and
- certain information regarding any employee of the Town that will be called as a witness in the discipline of Lt. Tim Bruner.”

The Town received your request on July 13, 2005, and responded by letter on July 19, 2005. In its response, the Town wrote: “please be advised that the documents requested do not fall within the Public Records Act and will not be made available. However, we are also in

receipt of your Request for Production of Documents to which we will be responding as soon as possible.”

You filed your formal complaint on July 19, 2005 alleging the wrongful denial of the records. You requested priority status because you intend to use the records in a proceeding before another public agency. Therefore, this advisory opinion is issued within seven (7) days of your complaint. *See* Ind. Admin. Code tit. 62, r. 1-1-3 (2000).

I sent a copy of your complaint to the Town. Mr. Jordan D. Church, attorney for the Town, responded by letter, a copy of which I enclose for your reference. Mr. Church informed me that the third category of records has been provided. He also stated that the Town’s objection to the first two categories of records was that the request had not been particularized by employee name as required by IC 5-14-3-4(b)(8). Since the filing of the complaint, Mr. Church had a conversation with Attorney Karlson, and Mr. Karlson had submitted a revised request that includes a roster of employee names. Hence, the Town will respond to the request and fulfill it.

ANALYSIS

Any person may inspect and copy the public records of any public agency except as provided by section 4 of the APRA. Ind. Code 5-14-3-3(a). A request for inspection and copying must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). Information concerning public employees contained in a personnel file may not be disclosed at the discretion of the public agency, except that certain information must be disclosed. IC 5-14-3-4(b)(8)(A)-(C). The information that must be disclosed includes the information you seek concerning final disciplinary action and formal charges against firefighters and other personnel of the Town. *Id.* This requirement that certain information must be disclosed 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. *Id.*

If a public agency denies a written request for records, it must do so in writing, and the denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

The Town’s withholding of the personnel file information did not contain a statement of the specific exemption in section 4(b)(8) that authorized the withholding of the personnel file information because it was not particularized by employee name. Also, we have stated that a public agency that believes a request for records is not stated with reasonable particularity is obligated to contact the requester to seek more clarity. It was not legally sufficient, in my opinion, for the Town to deny you the information because the documents “do not fall within the Public Records Act.” These are clearly records that are maintained by the Town, a public agency. Hence, they are “public records” as defined by the APRA. IC 5-14-3-2(m).

Also, although the Town in its complaint response does not take the position that the Request for Production overrides your APRA request, the Town’s July 19 response letter dimly suggests such a belief. Often, public agencies express a belief that litigants may not “use” the

APRA in the place of the litigant's rights under the discovery rules. As this office has written many times, the APRA stands as an independent means to receive records from a public agency.

However, the Town is correct that it is not required to provide you the specified information where your request was not particularized by employee name. IC 5-14-3-4(b)(8). Hence, I find that although the Town's denial letter did not meet the requirements of the Access to Public Records Act, it could deny you the records unless and until you submitted your request by employee name. You have now done so, and the Town has indicated it will comply.

CONCLUSION

For the foregoing reasons, I find that the Town of Fishers violated the Access to Public Records Act when it issued an insufficient denial letter, but the Town was not required to disclose employee personnel information without your request being particularized by employee name.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jordan Church