
OPINION OF THE PUBLIC ACCESS COUNSELOR

KRISTEN S. BROWN,
Complainant,

v.

COLUMBUS POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
19-FC-21

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Columbus Police Department violated the Access to Public Records Act.¹ City Attorney Alan L. Whitted filed an answer on behalf of the department. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 25, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute about public records connected to the departures of two Columbus police officers, who resigned after allegations of wrongdoing.

Kristen S. Brown (“Brown”) filed a formal complaint alleging the Columbus Police Department (“CPD”) violated the Access to Public Records Act (“APRA”) by improperly denying her access to public records.

On February 5, 2019, Brown filed a public records request with the CPD requesting the following:

All documents in the personnel files of Ron May and Dan Meister regarding the recent internal investigations of them for alleged ghost employment and documents regarding the outcomes/results of those investigations.

Although CPD provided Brown some documents from the personnel file of both officers, Brown contends the documents did not include a factual basis for the disciplinary action against the officers. As a result, Brown filed a formal complaint with this office.

This office notified CPD of the complaint on February 26, 2019. CPD, by and through counsel, filed its answer on March 21, 2019.

The CPD denies that it violated APRA. First, CPD asserts that Brown never requested the “factual basis” required under Indiana Code section 5-14-3-4(b)(8)(C). CPD maintains that it is improper for Brown to claim the department violated APRA by not providing records she did not request.

Second, CPD contends that it provided Brown with the records she requested when it became apparent what she was requesting. On March 15, 2019, CPD provided Brown an email detailing the factual basis. Instead of qualifying the resignation as voluntary, the CPD did frame it as a resignation in lieu of discipline, thus satisfying the request.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana 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. Ind. Code § 5-14-3-1. Further, 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.” *Id.* There is no dispute that the Columbus Police Department (“CPD”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy the CPD’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a).

In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Personnel Files of Public Employees

A noteworthy exception to the rule of disclosure under APRA is the exception regarding personnel files of public employees.

Under APRA, a public agency is empowered with the discretion to withhold from disclosure most employee personnel records from public disclosure. Ind. Code § 5-14-3-4(b)(8). Yet, solidly embedded in the discretionary exception for personnel files of employees is an exception—to the exception—that provides the following:

- (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.

Id. In effect, our legislature provided public agencies with the discretion to withhold personnel records of public employees, but not to withhold the information set forth in subsections (A), (B), and (C).

That means, upon a proper request, a public agency must disclose the factual basis for a disciplinary action in which final action has been taken that resulted in an employee being suspended, demoted, or discharged.

Indeed, this distinguishes public employees from their private sector counterparts. Private sector employees enjoy a broader privacy expectation in regard to their employment compared to public employees. This is, at least in part, because public employees are civil servants and ultimately accountable to the public-at-large. *See Ind. Code § 5-14-3-1*.

This office has devoted a substantial amount of time and resources interpreting this exception as it relates to forced resignations as discharges. *See Opinion of the Public Access Counselor*, 18-FC-34 (2018). Courts will also look at an element of duress when considering an employment action to be truly voluntary. *City of Evansville v. Conley*, 661 N.E.2d. 570 (Ind. Ct. App. 1996).

It appears as if CPD agrees, at least in the context of this case. I have reviewed the email sent by CPD's attorney and it meets a reasonable standard of "factual basis" as is required by law.

Some of the confusion here stems from the Complainant's assertion that a factual basis must include "findings," which are only created after a due process hearing when an employee appeals a disciplinary action. Due process under the police merit system is mutually exclusive from the public access required under Indiana Code section 5-14-3-4(b)(8).

If a merit board or public safety board conducted a hearing and issued findings, then undoubtedly the findings would be

public record and supplement the factual basis. This step was not taken, however, and the due process proceedings were not carried out. Therefore those findings do not exist, nor should they. A factual basis is enough and CPD provided those records to the Complainant.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Columbus Police Department did not violate the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor