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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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MAREK MAZUREK,  
*Complainant,*

v.

ST. JOSEPH COUNTY,  
*Respondent.*

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Formal Complaint No.  
20-FC-28

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaints alleging the St. Joseph County violated the Access to Public Records Act.<sup>1</sup> Attorney Peter Agostino filed a response on behalf of the county. In accordance with Indiana Code section 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, 2020.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This case involves a dispute over access to the names of two former employees of St. Joseph County.

On February 14, 2020, Marek Mazurek, a reporter for the *South Bend Tribune*, filed a public records request with the St. Joseph County Board of Commissioners seeking the following:

The names of the two (former, since they've resigned) 911 center dispatchers who were found to have not followed protocol in handling calls for the Dec. 31, 2019 fatal retention pond crash in Mishawaka.

Ten days later, Mazurek followed up on the request with the commissioners' attorney Peter Agostino. Agostino denied the request since there was no final disciplinary action taken against the employees in question. Agostino also noted that the information requested was beyond the scope of what is available under the Access to Public Records Act in connection with employee personnel files.

The next day, Mazurek filed a formal complaint with this office asserting the county violated APRA by denying the request. In essence, Mazurek argues that Indiana Code Section 5-14-3-4(b)(8)(a) requires the agency to disclose the name of the former dispatchers.

On March 12, 2020, St. Joseph County, through Agnostino, responded to Mazurek's complaint. Essentially St. Joseph County argues that Mazurek's complaint is moot based on the prior disclosure of relevant employee rosters and because the county disclosed the names of the employees in an

email to this office. The issue of mootness aside, St. Joseph County does not concede that APRA required it to disclose the identity of the employees that resigned.

Since this complaint involves an issue that may arise again in a later case, this office will address the underlying issue even though Mazurek presumptively received the information requested.

### **ANALYSIS**

The key issue in this complaint is whether the Access to Public Records Act requires a public agency to disclose the name of a former employee after the employee resigns. The short answer is: yes.

#### **1. The Access to Public Records Act**

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.

The Access to Public Records Act (APRA) says “(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 St. Joseph County is a public agency for the purposes of the APRA; and thus, subject to the law’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and copy the county’s public records

during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b).

This case involves the application of APRA’s discretionary exception for the personnel files of public employees.

## **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 has discretion to withhold most employee personnel records from public disclosure. Ind. Code § 5-14-3-4(b)(8).

Except for 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.

Ind. Code § 5-14-3-4(b)(8)(A)–(C)(emphasis added). In effect, our legislature provided public agencies with the discretion to withhold personnel records of public employees,

but not the information set forth in subsections (A), (B), and (C). Those items are the “exception to the exception”, so to speak.

Here, Mazurek requested the names of two former 911 dispatchers that resigned from St. Joseph County. The county argues that APRA does not require the disclosure of the employees because they resigned without any final disciplinary action.

The plain language of APRA expressly removes, among other things, the “name ...of present or former officers or employees of the agency” from the information an agency has discretion to withhold under the general exception for personnel files of public employees. *See* Ind. Code § 5-14-3-4(b)(8)(A).

Notably, a final disciplinary action that results in a suspension, demotion, or discharge is prerequisite only for disclosing the underlying factual basis of the disciplinary action; not the employee or former employee’s name.

In other words, a final disciplinary action is not necessary for an agency to disclose the name of a former employee who resigned.

### **CONCLUSION**

Based on the foregoing, it is the opinion of this office that St. Joseph County did not violate the Access to Public Records Act if the agency disclosed the names of the two employees who resigned to Mazurek. If not, the county's denial constitutes a violation of APRA.

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor