



STATE OF INDIANA

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August 26, 2011

Corey Hamel

City of Mishawaka

Via e-mail: chamel@mishawaka.in.gov

Re: Informal Inquiry 11-INF-46; Final Action

Corey,

The public policy of the 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." See I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

From what has been provided, the Police Chief has made a recommendation to the Board that an officer be discharged from his employment. The Board will not meet to consider the issue until November 2011. During the pendency, the Office has been suspended without pay by the Board. The Board has the option of discharging the employee, issuing a suspension, or if the allegations are found to be untrue, the Officer would be reinstated with full back pay. You have received a request for information that is contained in the Officer's personnel file. You have further provided that the only records responsive to the request that has been received are in the Officer's personnel file. Any records outside his personnel file would not be applicable to my analysis and would require a separate examination.

The APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA's disclosure requirements, 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.
IC 5-14-3-4(b)(8).

Therefore, a public agency is required to disclose a record concerning “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.” It is my understanding that the Board’s “final action” will not take place until November 2011. As such, it is my opinion that the Board would not violate the APRA by refusing a request, since "final action" has not occurred at this time. Upon the Board taking final action at the November 2011 meeting, the Board would be required to disclose the factual basis requirements as provided in (C) (should the Officer be suspended, demoted, or discharged). Your inquiry seems to be factually similar to a 2009 opinion from this office. *See Opinion of the Public Access Counselor 090-FC-244*. Prior opinions issued by this office provided insight on what is required of a public agency in providing a factual basis for a disciplinary action as outlined I.C. 5-14-3-4(b)(8). *See Opinion of the Public Access Counselor 11-FC-149*.

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a stylized "H".

Joseph B. Hoage
Public Access Counselor