



STATE OF INDIANA

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Mr. Warren A. Auxier

Via email: ICWtraveler@aol.com

Re: *Informal Inquiry 11-INF-47; I.C. § 5-14-3-4(a)(2)*

Mr. Auxier,

You provide that the City denied your request for access to a public record by citing I.C. § 5-14-3-4(a)(2), which provides:

Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, 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:

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

The City did not specifically cite in its denial the specific administrative rule that granted the records you sought confidential status. The City has since provided that the rule was adopted by a state agency, not the City itself, but again has not specifically cited the administrative rule.

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 City 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 City'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).

The APRA states that a public agency "may not" disclose records "declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute." See I.C. § 5-14-3-4(a)(2). The APRA further provides that when an agency denies a request received in

writing, it must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). It would logically follow that if an agency were to exempt a record from disclosure pursuant to I.C. § 5-14-3-4(a)(2), it would also be required to cite to the statute that granted the public agency the authority to classify records as confidential and the specific administrative rule that made the specific record requested confidential.

In reviewing prior opinions of the public access counselor regarding I.C. 5-14-3-4(a)(2), this issue commonly arises in records requests received by the Department of Corrections (“DOC”) from individuals classified as “Offenders” under the APRA. There, I.C. § 11-8-5-2(a) provides the DOC may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the DOC promulgated 210 I.A.C. 1-6-2 in making certain records confidential. As such, when the DOC makes a denial pursuant to I.C. § 5-14-3-4(a)(2), it also makes notation to I.C. § 11-8-5-2(a) and 210 I.A.C. 1-6-2.

Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. As such, if the City failed in its denial of your records request pursuant to I.C. § 5-14-3-4(a)(2) to provide the statute that granted the public agency the authority to classify records as confidential and the administrative rule that actually made the record confidential, it acted contrary to the APRA.

If I can be of additional 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, flowing style.

Joseph B. Hoage
Public Access Counselor