



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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September 28, 2015

Brian Johnson
47 West Marion Street
Danville, IN 46122

Re: Formal Complaint 15-FC-238; Alleged Violation of the Access to Public Records Act by the Hendricks County Probation Department

Dear Mr. Johnson,

This advisory opinion is in response to your formal complaint alleging the Hendricks County Probation Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Office responded via Ms. Catherine Haines, Court Administrator. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 17, 2015.

BACKGROUND

Your complaint dated August 14, 2015 alleges the Hendricks County Probation Department violated the Access to Public Records Act by failing to acknowledge your request.

On June 9, you requested all records related to eligibility requirements for home department, including alcohol testing. On July 16, the Department denied your request, citing the deliberative materials exemption under the APRA.

On September 2, the Department responded. The Department notes that you previously attempted to obtain this information via a request for production of documents, which was quashed under Indiana Administrative Rule 9.

ANALYSIS

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 Ind.



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Code § 5-14-3-1. The Hendricks County Probation Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department's disclosable, public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The Department has raised two exemptions to disclosure, the deliberative materials exemption and Administrative Rule 9. Admin. Rule 9(G)(3) excludes from public access all court administration records declared confidential by statute or court rule. Further, the Hendricks County Superior Court declared the Home Detention Policy and Procedures and the IRAS Policy Manual to be court administrative records under Admin. Rule 9(G)(3).

Ind. Code § 5-14-3-4(a)(8) exempts from disclosure records "declared confidential by or under rules adopted by the supreme court of Indiana." Therefore, the Department's refusal under Admin Rule 9 was proper.

The Department also raises the deliberative materials exemption under Ind. Code 5-14-3-4(b)(6). This exemption allows an agency to withhold records at its discretion so long as they are considered deliberative material. This case is not dissimilar from *Newman v. Bernstein*, 766 N.E.2d 8 (Ind. Ct. App. 2002) which found a similar document to be deliberative.

Members of the Probation Department are decision makers. To release the eligibility requirements would disadvantage the department by placing the prosecutors and those who rely on the Probation Department's assessment in a compromising negotiation position. Therefore, release would cause the Probation Department's decision making authority would suffer.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Hendricks County Probation Department has not violated the Access to Public Records Act.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Cc: Catherine Haines