

February 8, 2005 Guidance Regarding the 2003 Legislative Amendments to the Personnel File Exemption

February 8, 2005

Mr. Fred Jones
JONES HUFF & JONES
550 E. Jefferson
Plymouth, IN 46563

Re: Informal Inquiry Response re: Personnel Records Exception

Dear Mr. Jones:

You have requested an informal opinion from the Office of the Public Access Counselor. Pursuant to Ind.Code 5-14-4-10(5), I am issuing this letter in response to your request.

You have asked me to discuss the text of the Access to Public Records Act that was amended during the 2003 legislative session. Specifically, you inquired about which session law prevailed when both bills amended part of section 4 of the APRA without referring to one another.

I have enclosed a copy of the relevant portion of P.L. 173 (HEA 1242) and the complete P.L. 200 (SEA 169). SECTION 5 of HEA 1242 contains amendments to IC 5-14-3-4. I have highlighted in yellow the part of IC 5-14-3-4(b) that contains the personnel file exception, subsection 8. You will note that no change to that part of the code was made in HEA 1242. The language of the statute until the 2003 legislative session was “(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.”

In SEA 169, also enclosed, I have highlighted in yellow the same provision as above. You will note that SEA 169 did amend IC 5-14-3-4(b)(8)(C) to remove some of the words and add others. The resulting provision reads, under SEA 169: “(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.”

In my opinion, the legislature intended to amend IC 5-14-3-4(b)(8) by SEA 169. HEA 1242 made other amendments to section 4 but did not change (b)(8) at all. It is not likely that the legislature intended to undo an amendment that it had passed in another bill that session. It is more likely that the legislature intended that the amendment to (b)(8) in SEA 169 control.

Please let me know if you have any questions.

Sincerely,

Karen Davis
Public Access Counselor