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13FC:0026

Date:

11/14/2013

Subject:

Ryan J. Foley / Department of Administrative Services - Chapter 22 - Public Records

Opinion:

Ryan J. Foley

226 Washington Park Road

Iowa City, IA 52245

RE: Complaint number 13FC:0026 – concerning the release of arbitrators’ decisions by the Department of Administrative Services

Dear Mr. Foley:

On October 17, 2013, you submitted a formal complaint with the Iowa Public Information Board (IPIB) concerning the Department of Administrative Services (DAS). In that complaint you alleged that a violation of the Iowa public records laws, Chapter 22 of the Iowa Code, had occurred. The basis for your complaint was that on September 11, 2013, you had requested the arbitration decisions in the cases of nine state employees whose employment termination was upheld and for an additional one decision that reinstated employment. You stated that DAS, upon the advice of the Iowa State Attorney General, declined to release those decisions on the ground that these decisions are confidential personnel records. You further stated:

“I disagree with that interpretation. My understanding is that state law is silent on whether arbitrators’ decisions are public, and I believe the presumption of openness should make them public. The Iowa Public Employment Relations Board (PERB) treats these decisions as public record and posts them online - for cases in which the board receives a copy...”

You requested that the IPIB “rule that arbitration decisions on union grievances related to employee disciplinary actions are public records” and “order DAS to release the 10 decisions that it has withheld.”

You included examples of decisions that were not released by DAS but were published by PERB. You also provided a copy of your original request (dated August 9, 2013) and the response you received on September 11, 2013. The ten decisions that were not released were listed, along with employing agency, grievant and issue. The response from Caleb Hunter at DAS stated that according to the Attorney General, “the arbitrations of the following individuals are not public. However, the information (provided) below is public according to Iowa Code section 22.7(11)(a)(5).”

Pursuant to Iowa Administrative Code Rule 497-2.1(3), the IPIB may delegate acceptance or dismissal of a complaint to the Executive Director. The decision of the Executive Director is subject to review by the Board.

Iowa Code Section 22.7 lists records that are public, yet confidential under Iowa law. The prelude to the section reads:

“The following records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information.”

Subsection 22.7(11)(a) exempts certain personnel records from disclosure: “Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies....” This subsection continues with exceptions to this exemption, including name, compensation, dates employed, positions held, educational institutions attended, degrees earned, and “(5) (t)he fact that the individual was discharged as the result of a final disciplinary action upon the exhaustion of all applicable contractual, legal, and statutory remedies.”

DAS is the custodian for the personnel records for all state employees. The PERB is not the custodian of personnel records described by Section 22.7(11)(a) for any employees except its own. Accordingly, for arbitration decisions involving discharge, which is final disciplinary action upon exhaustion of applicable contractual remedies, you received from DAS the summary information as outlined by Subsection 22.7(11)(a). But you received from PERB the full arbitration decision because Section 22.7(11)(a) does not apply to PERB.

The position provided by DAS and the Attorney General is supported by Iowa case law. In July 2012, the Iowa Supreme Court addressed the confidentiality of disciplinary decisions as part of personnel records in the case *American Civil Liberties Union Foundation of Iowa, Inc. v. Records Custodian, Atlantic Community School District*, 818 N.W.2d 231. Justice Wiggins, writing the majority opinion, outlines the history of Chapter 22 and judicial decisions concerning the Open Records Act. He discusses the process of judicial review when disclosure is requested of a confidential record under Section 22.7.

Although the Iowa Supreme Court has at times utilized an “analytical framework” to determine whether an exception applies for personal information in confidential records, such an approach is not required when the “plain language” of an exemption covers the information the requestor seeks. In *ACLU v. Atlantic School District*, the Court relied upon a previous decision to exempt performance evaluations under section 22.7(11) based upon the “plain language” of the statute (see also *Des Moines Community School District Public Records v. Des Moines Register & Tribune Co.*, 487 N.W.2d 666, Iowa 1992). The Court continued with the analysis, determining that “(d)isciplinary records and information regarding discipline are nothing more than in-house job performance records or information.” Because the requested records fell within the “plain language” of Section 22.7, further balancing of transparency versus privacy was not required.

The position of DAS, upon the advice of the Attorney General's office, accurately reflects the current statutory direction and court interpretation.

Iowa Code Section 23.8 provides two options for action by the IPIB upon receipt of a complaint, the second of which states:

“Determine that, on its face, the complaint is outside its jurisdiction, is legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been finally disposed of on its merits by the board or a court. In such a case the board shall decline to accept the complaint. If the board refuses to accept a complaint, the board shall provide the complainant with a written order explaining its reasons for the action.”

For the reasons set forth above, it is therefore ordered that the complaint is dismissed on the grounds that violations of Chapter 22 did not occur, making the complaint legally insufficient.

A copy of this Order is being forwarded to the Iowa Public Information Board for review at its next scheduled meeting on November 14.

Sincerely,

Keith Luchtel
Executive Director

cc: Caleb Hunter, DAS

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