

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CAUSE NO. 49D06-2107-PL-025333

BARBARA TULLY,)
)
 Plaintiff,)
)
 -vs-)
)
 THEODORE (“TODD”) ROKITA,)
 in his official capacity as Indiana)
 Attorney General,)
)
 Defendant.)

Reviewed *AMZ*
February 2, 2023

Set WebEx on the following date:

Friday, February 10, 2023 at 10:00 am

FILED
February 7, 2023
CLERK OF THE COURT
MARION COUNTY
DS

PLAINTIFF’S MOTION TO AMEND AND/OR CLARIFY

Comes now Plaintiff, Barbara Tully, by counsel, and hereby moves to amend and/or clarify the Court’s order of January 3, 2023, granting Tully’s motion for summary judgment and denying Defendant Rokita’s cross motion for summary judgment. In support Tully states:

1. Tully filed this action under the Indiana Access to Public Records Act (“APRA”) seeking to inspect and/or copy the January 25, 2021, opinion of the Office of the Inspector General (“OIG”), issued upon Rokita’s request, addressing Rokita’s outside employment prior to and after he was sworn in as Indiana Attorney General.

2. Both parties filed motions for summary judgment, and on January 3, 2023, the Court issued an order granting Tully's motion and denying Rokita's cross motion. That order rejected Rokita's arguments that the opinion Tully sought to inspect and copy was discretionarily exempt from disclosure by the only exemptions Rokita invoked.
3. In its January 3, 2023, order (at 3) the Court gave Rokita 30 days to submit the OIG's opinion to the Court with proposed redactions, and stated that the Court would thereafter "issue a *redacted* copy of the informal advisory opinion." (emphasis added).
4. Though Section 6(a) of APRA, I.C. 5-14-3-6(a), requires a public agency to redact a record before it is released, redaction is required only if that public record "contains disclosable *and nondisclosable* information." (emphasis added). It is too late for Rokita to invoke any additional discretionary exceptions to disclosure.
5. As the Court has found inapplicable, and thus rejected, the only specific discretionary grounds Rokita invoked in denying Tully's APRA request, the public record at issue must be deemed to contain no discretionarily nondisclosable information. Therefore, the Court should not permit Rokita to redact under section 4(b)(6) or any other ARPA discretionary exemption. The only redactions that should be allowed are those

mandated by I.C. 5-14-3-4(a)(1)-(14), such as social security numbers.

Id. at (12).

6. The Court should also amend its January 3, 2023, Order to award Tully her costs and reasonable attorneys' fees as prevailing party in an amount to be determined by the Court. *See* I.C. 5-14-3-9(i); and *Shepherd Props. Co. v. Int'l Union of Painters & Allied Trades, Dist. Council 91*, 972 N.E.2d 845, 852 (Ind. 2012) ("APRA mandates an award of attorney's fees to a plaintiff who 'substantially prevails' if [as here] that party has first sought an advisory opinion from the public access counselor").

WHEREFORE, Tully respectfully requests that the Court amend and/or clarify its January 3, 2023, order by modifying paragraphs 2 and 3 of that order to permit the redaction only of information (if any) required to be redacted by section 4(a) of APRA, enter final judgment in Tully's favor, and amend that order to award her costs and attorneys' fees as prevailing party as is mandated by I.C. 5-14-3-9(i).

Respectfully submitted,

/s/ William R. Groth

William R. Groth, #7325-49

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2023, a copy of the foregoing was filed electronically. Service of this filing will be made on all IEFS-registered counsel by operation of the court's electronic filing system. Parties and counsel may access this filing through the court's system.

/s/ William R. Groth

William R. Groth, #7325-49