

February 19, 2004

Mr. Donald E. Morgan
300 South Guilford
Carmel, Indiana 46032

*Re: Formal Complaint 04-FC-11
Alleged Denial of Access to Public Records by the Cicero Police Department*

Dear Mr. Morgan:

This is in response to your formal complaint alleging that the Cicero Police Department (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it denied your December 22, 2003, request to inspect a file containing public records held by that public agency. The Department responded to your complaint. Chief Garry Cook contacted the undersigned upon receipt of the complaint and acknowledged denying your request to inspect the file, but noted that he had previously provided you with the records contained in that file. The Department's subsequent written response indicates that it has again produced copies of the records in the file. Your subsequent correspondence with this office acknowledges the productions. While I note that the Department has now produced the records from the file at issue, I find that the Department's denial of your request to inspect the records on December 22, 2003, was contrary to the APRA.

BACKGROUND

On December 22, 2003, you appeared at the Cicero Police Department and requested access to a specific file maintained by that agency for the purpose of inspecting the records therein. You previously obtained copies of the documents in that file after making several requests in October and November 2001. Your more recent request to inspect the file was based on your belief that additional documents may have been added since that prior production, and your desire to review those additional documents. Chief Cook declined to let you inspect the file. This complaint followed.

As noted above, Chief Cook contacted the undersigned upon receiving your complaint for a response, and acknowledged denying you access to inspect the file. According to Chief Cook, you were previously provided with the contents of the file in response to a prior records request in 2001. The Department's subsequent written response does not address the December 22, 2003, request and denial, but indicates that the Department has since tendered you copies the

records in the file. Your subsequent correspondence with this office acknowledges receipt of those records thought to be the “contents of the entire file” along with an invoice for copying.¹

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except with regard to those records that are exempted from disclosure as otherwise provided in the APRA. A request to inspect or copy public records may be oral or in writing. IC 5-14-3-9; *see* IC 5-14-3-3(a)(2). If the request is made orally, either in person or by telephone, the public agency may deny the request orally. IC 5-14-3-9(c). In this context, a denial of disclosure occurs when the person making the request is physically present in the office of the public agency and the person designated by the agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when the request has been made. IC 5-14-3-9(a)(1).²

In this matter, the Department expressly denied your request to review the file containing the records at the time you made your request. The Department’s denial was based on the fact that it had previously produced records from the file in response to an earlier request. As a general rule, a public agency is required to produce only one (1) copy of documents responsive to a records request. IC 5-14-3-8(e). Of course, your December 22, 2003, request did not seek copies, but rather inspection. Nothing in the APRA permits the public agency to deny you the right to inspect a record merely because you have previously reviewed or obtained the record. Moreover, I note that your request was based on your desire to see any new documents that may have been made a part of the file since your earlier inspection. The Department does not otherwise support its denial of your request to inspect the file by asserting any exemption to disclosure recognized by the APRA. Accordingly, it is my opinion that the denial was contrary to the requirements of the APRA.

That said, I note that the Department has now produced the entire contents of the file, including any material that was added to the file since your prior review and production. While this production does not remedy the denial referenced above, there is no indication before me that the Department is continuing to deny you access to any responsive records.

¹ I understand from your subsequent correspondence that you are returning the records other than those records dated September 2001 to present and requesting an amended invoice.

² None of this is to say that a person making the request is entitled to inspection or copying on demand. If the public agency does not produce the requested records or deny the request outright, it must otherwise respond to the oral request within 24 hours, and it must produce the records or deny the request within a reasonable time of the request.

CONCLUSION

For the reasons set forth above, I find that the Department's denial of your request to inspect records was contrary to the APRA. I further find that the Department has since provided you with copies of the responsive records.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Garry Cook