

February 9, 2004

Mr. Dexter L. Berry, No. 114153
Indiana State Prison
P.O. Box 41
Michigan City, Indiana 47901

*Re: Formal Complaint 04-FC-06
Alleged Denial of Access to Public Records by the Lafayette Police Department*

Dear Mr. Berry:

This is in response to your formal complaint alleging that the Lafayette Police Department (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it failed to produce records in response to your December 17, 2003, request for records. The Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Department did not violate the APRA.

BACKGROUND

On December 17, 2003, you signed a letter addressed to the System Manager of Records for the Lafayette Police Department requesting access to records you assert are maintained by that public agency. Specifically, your request sought an arrest report, incident investigation report, and police booking report, all involving the subject Anthony Lee Goodson. Your request also sought vehicle information for that subject. The documents supporting your complaint do not indicate when you sent this request or when the Department received it.

On December 31, 2003, the Department responded to your request in writing. The Department's response begins by stating that "an arrest report regarding Mr. Anthony Lee Goodson ... does not fall under the [APRA]." The Department's response further indicates that it considered that any information in the Department's possession and that was not filed in court was confidential, stating that only court records are public records. The Department's response concludes by directing you to the Bureau of Motor Vehicles to obtain any records or information regarding vehicles registered to the subject. This complaint followed.

Your complaint alleges that you were denied records in violation of the APRA. In support of your complaint, you attach a copy of the December 17, 2003, letter you sent to the Department requesting records. In addition, you attach a copy of a preprinted Request for

Access to Public Record form, also dated December 17, 2003, and also addressed to the System Manager of Records for the Department. The form request, like the letter referenced above, seeks the arrest, incident and booking reports for Anthony Lee Goodson. However, unlike the letter referenced above, the form request provides specific information regarding the incident at issue, including the date of the incident and a Department case number. In responding to your complaint, the Department asserts that it did not receive the part of your records request containing the form request with the date of the incident and incident case number included. The Department avers that it does not have "Anthony Lee Goodson" in its system, but acknowledges that with the new information provided it is able to identify responsive records for review and production. The Department's response indicates that the records will be produced subject to the Department's receipt of the record fee, or if not produced that you will be notified of that fact and of the reasons for nondisclosure.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person has the right to inspect and copy the public records of any public agency. Upon receipt of a records request, the public agency is required to provide the requested copies to the person making the request, or allow the person to make copies on the agency's equipment or on the person's own equipment. IC 5-14-3-3(b). A public agency may not deny or interfere with these rights, and may not withhold a record from disclosure unless it falls within one of the exemptions set forth in Indiana Code 5-14-3-4. In the case of a denial, the public agency must set forth the denial in writing and must cite to the specific statutory exemption supporting the nondisclosure. IC 5-14-3-9(c).

Certainly, a law enforcement agency may withhold investigatory records as confidential. *See* IC 5-14-3-4(b)(1). However, notwithstanding that exemption, a law enforcement agency is *required* to maintain *and to produce* certain limited information that is expressly declared by state law to be non-confidential and disclosable. IC 5-14-3-5. This information includes information that identifies the name, age and address of persons placed under arrest, as well as information concerning any charges upon which the arrest is based. IC 5-14-3-5(a). This information also includes information that identifies the name, age and address of persons received in a jail or lock-up, as well as information concerning the time, date and reason for that person's incarceration. IC 5-14-3-5(b). And, this information includes a daily log or record of accidents or requests for assistance, including the time, substance and location of all complaints and requests for assistance, the time and nature of the agency's response, and if the incident involves an alleged crime, specific information and the factual circumstances (including property involved) regarding the incident. IC 5-14-3-5(c). This is, in my opinion, the sort of information that is responsive to your records request. The Department is required to maintain it in a non-confidential and disclosable manner, and it is required to disclose the information upon request. IC 5-14-3-5.

In responding to your complaint the Department avers that it did not receive that part of your December 17, 2003, records request that contained the date of the incident and the case number, and did not have that information in hand when it responded to your records request. The Department's response to your complaint suggests that the missing information was required

to identify a responsive document inasmuch as the Department could not identify a responsive record using only the subject's name. The Department's response to your records request did not state that it was unable to locate a responsive record based on the information you provided, and seemed instead to suggest that it had responsive records but would not provide them without the written permission of the subject. The Department's response also appears to suggest that it may not be in compliance with the provisions of Indiana Code 5-14-3-5 generally. I do not find it necessary to reconcile these issues to resolve this complaint. While I find the Department's response to your request lacking for the reasons set forth above, I take in good faith the Department's averment that it did not receive your entire request and on that basis decline to find that it violated the APRA when it failed to produce records in response to that request. I note that the Department's response to your complaint now indicates that it has identified and intends to produce the non-confidential records or non-confidential information from those records.¹ Should the Department now fail to produce its responsive records in compliance with your request and Indiana Code 5-14-3-3 and 5-14-3-5, it will be in violation of the APRA and subject to civil action pursuant to Indiana Code 5-14-3-9.

CONCLUSION

For the reasons set forth above, I find that the Department did not violate the APRA in responding to your records request.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Helen Hession

¹ I note for the Department's benefit that while it indicates that production is subject to the review and approval of Department personnel, Indiana Code 5-14-3-5 mandates that the Department produce minimal specific information in response to the records request, and Indiana Code 5-14-3-9 requires the Department to cite to the specific statutory exemption authorizing it to withhold any other information that it considers confidential, and that it do so in writing.