

April 30, 2004

Ms. Tanya Hiatt
305 North Sycamore
P.O. Box 264
Gaston, Indiana 47324-0264

*Re: Formal Complaint 04-FC-58; Alleged Denial of Access to Public Records
by the Gaston Police Department*

Dear Ms. Hiatt:

This responds to your formal complaint alleging that the Gaston Police Department (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it denied you access to public records concerning a complaint investigation that was initiated against you. A copy of the Department's response¹ to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Department violated the APRA when it failed to timely respond to your request in writing and with citation to a statutory exemption supporting its nondisclosure. I further conclude that, notwithstanding any appropriate exemption to production of the records requested, the Department was required to compile and produce specific but limited information regarding the complaint investigation. While these violations are not remedied by any subsequent production, I note that the Department now responds that the responsive records are available for your inspection and copying.

BACKGROUND

On March 30, 2004, you submitted both verbal and written public record requests to the Department seeking information regarding a complaint that was alleged to have been filed against you. You received a verbal denial for the stated reason that the investigation was not complete. This complaint followed. You assert that the Department violated the APRA when it failed to respond to your written request in writing and when it failed to provide you with a citation to the provision of the APRA that authorized the Department's nondisclosure of public records. You further assert that you are entitled to disclosure under the APRA. In response, the Department now asserts that the nondisclosure was authorized under the exemption that permits a law enforcement agency to withhold its investigatory records. The Department further asserts that you were not entitled to information otherwise required by the APRA to be produced

¹ The response is actually a copy of a letter to you dated April 22, 2004, wherein the Department responds directly to your request for records. No response is offered to the complaint.

because the investigation was not then complete. The Department does not offer a response to your claim challenging its failure to timely respond to your request in writing or to cite within its initial denial the statutory exemption supporting nondisclosure. The Department states that all of the responsive records are now available for your inspection or copying.

ANALYSIS

The Department now agrees to produce responsive records. While that production precludes finding a continuing violation, the Department's earlier failures to provide you with a timely written response to your written request, to provide a citation to the specific provision of the Indiana Code authorizing nondisclosure, and to produce specific limited information required by statute notwithstanding any applicable exemption, were contrary to the law.

A public agency that receives a written request for public records is required to respond to that request in writing. IC 5-14-3-9(c)(1). If the request is delivered in person, as was the case here, the written response must be provided within 24 hours. IC 5-14-3-9(a)(2). If the response is a denial, the denial must include a statement of the specific exemption or exemptions authorizing the nondisclosure. IC 5-14-3-9(c)(2). The Department did not timely respond to your written request in writing in violation of the APRA. Moreover, the response you did receive failed to cite to or even characterize a recognized statutory exemption to production of a public record. The stated reason for the denial – that the investigation was not complete – does not fall within any of the statutory exemptions. While the Department now offers a statutory exemption to support its prior nondisclosure, specifically, the investigatory records exemption (IC 5-14-3-4(b)(1)), its failure to offer that reason for the denial in a written response within 24 hours of receiving the request violated the Department's response obligations under the statute.

With regard to the exemption now claimed, I agree with the Department that the investigatory records exemption would allow it to withhold records containing the requested information under Indiana Code 5-14-3-4(b)(1). Indiana Code 5-14-3-4(b)(1) exempts production of an investigatory record of a law enforcement agency at the discretion of the agency. An investigatory record is defined as information compiled in the course of the investigation of a crime. IC 5-14-3-2. The Department's averment and the facts provided in the complaint and response suggest to me that the records responsive to the request fall within the exemption now stated. However, notwithstanding that exemption, the Department was required at the time you made your request to compile and produce specific, limited information regarding the investigation. *See* IC 5-14-3-5(c)(3). This included more than just the "police log," which both parties assert was produced at that time. Rather, it included (A) the time, date, and location of the occurrence; (B) the name and age of any victim (subject to some exceptions not applicable here); (C) the factual circumstances surrounding the incident; and (D) a general description of any injuries, property, or weapons involved. IC 5-14-3-5(c)(3). None of this information was provided. The Department seeks to excuse this nondisclosure because the investigation was not complete, but I find that any such information the Department then had as part of its records was required to be produced.

Formal Complaint 04-FC-58

April 30, 2004

Page 3

CONCLUSION

For the reasons set forth above, I find that the Department violated the APRA. I do not find any continuing violation based on the Department's subsequent disclosure.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. James Oliver