

August 14, 2006

*Sent Via Facsimile*

Ms. Lori L. Caldwell  
*Post Tribune*  
1065 Broadway  
Gary, IN 46402

*Re: Formal Complaint 06-FC-123; Alleged Violation of the Access to Public Records Act by the Indiana Department of Natural Resources*

Dear Ms. Caldwell:

This is in response to your formal complaint alleging that the Indiana Department of Natural Resources (“Department”) violated the Access to Public Records Act by failing to give you certain information about an incident involving a watercraft that occurred on Lake Michigan in Gary. I find that the Department violated the Access to Public Records Act.

#### BACKGROUND

You allege in your formal complaint that you were refused any information concerning an incident that occurred on Sunday, July 9. An ambulance was called and a personal watercraft was towed from the area, according to Gary Fire Department officials and the Lake County police. You contacted the Department requesting information about the incident, such as the date and time, information about any victims, arrests, and charges. You requested this information daily from July 10 through Friday, July 14 when you filed this complaint. You were told that a suspect had been charged but had not been apprehended. He was therefore a flight risk. Nevertheless, you were given no information about the incident by the Department.

The Department responded to your formal complaint. A copy of the response of Indiana Conservation Officer Wilson Davis is attached for your reference. Officer Davis recounts the various communications between the Department and you during the week. In essence, Officer Davis was told by the investigating officers that the investigation was ongoing and that he could

not give you any information. After his absence of two days during the week, Officer Davis returned to the Department on Friday, July 14, to learn that the case had been sent to the prosecutor's office and a decision on any charges was pending. Until charges were filed, the suspect was considered a flight risk, and no information on the matter should be released to the press. As of the date of the Department's response to your complaint, July 19, no charges had been filed. Officer Davis disagrees that you were told the suspect had been summoned for an offense. He contends that the records you seek are investigatory records of law enforcement, subject to nondisclosure under Indiana Code 5-14-3-4(b)(1). Although section 5 of the Access to Public Records Act mandates disclosure of arrest and summons information, no arrest or summons had been issued.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). The Department is a public agency and a law enforcement agency, under IC 5-14-3-2(1)(6)(defining law enforcement agency to include conservation officers of the Department of Natural Resources).

Investigatory records of law enforcement agencies are excepted from disclosure at the discretion of the public agency. IC 5-14-3-4(b)(1). "Investigatory record" means information compiled in the course of the investigation of a crime. IC 5-14-3-2(h). However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of the Access to Public Records Act. IC 5-14-3-4(b)(1). Section 5 provides that certain specified information be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint.

The latter record is commonly called the daily log. Section 5(c) states that an agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency;
- (2) The time and nature of the agency's response to all complaints or requests for assistance;
- (3) If the incident involves an alleged crime or infraction: (A) the time, date, and location of the occurrence, (B) the name and age of any victim, unless the victim is a victim of a crime under Indiana Code 35-42-4, (C) the factual circumstances surrounding the incident; and (D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency. IC 5-14-3-5(c).

The Department has asserted it had no information regarding the July 9 incident, because the suspect had not yet been arrested or summoned for an offense, and remained a flight risk. However, the Department offers no explanation for why it did not provide you with the information in the daily log, which it was required to create no later than Monday, July 10. The denial of your request for information that was required to be maintained in the daily log was in violation of the Access to Public Records Act. Any continuing denial of this record is a continuing violation of the law, actionable under IC 5-14-3-9(e). I note that the daily log is not required to contain the name or identification of a suspect. Once a person is arrested or summoned for an offense, however, the information specified in IC 5-14-3-5(a) is required to be made available.

### CONCLUSION

For the foregoing reasons, it is my opinion that the Indiana Department of Natural Resources denied you a record in violation of the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Officer Wilson Davis