



STATE OF INDIANA

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July 3, 2008

Leslie McGuire
DOC #172250
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 08-FC-156; Alleged Violation of the Access to Public Records Act by the East Chicago Police Department

Dear Mr. McGuire:

This advisory opinion is in response to your formal complaint alleging the East Chicago Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. I have enclosed a copy of the Department's response to the complaint for your reference. It is my opinion the Department has not violated the APRA because its response was timely under the APRA but the Department may only deny access to the emergency 911 call recordings to the extent they are investigatory records.

BACKGROUND

You allege that you requested from the Department access to records related to 911 emergency telephone calls. You do not indicate the date you mailed the request, but the date on the request form you provided is May 30, 2008. You filed this complaint on June 17, alleging the Department failed to respond to the request.

The Department responded to the complaint by letter dated June 30 from Chief of Police Angelo Machuca, Jr. The Department contends it received your request on June 2. The Department provides a copy of a response to you dated June 4, and the Department contends the response was sent on June 9. The Department contends it generated a second letter on June 12 and sent it to you. In the June 12 letter, the Department denied your request, contending the records you requested are investigative reports, which are excepted from disclosure at the discretion of the agency.

ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail (or electronic mail) or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

The Department received your request via mail on June 2 and responded by mail on either June 4 or June 9. Whether the letter was sent on June 4 or June 9, the response was timely under the APRA because it was sent within seven days of receipt of the request. *See* I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Previous public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

The Department's June 12 response contained an indication that the Department denied your request based on the investigatory records exception to disclosure found in I.C. § 5-14-3-4(b)(1). While you do not make an allegation regarding the basis for the denial since you had not yet received the June 12 letter when you filed the complaint, I would note to the Department that not all recordings of emergency 911 calls are investigatory records. The recordings of the calls would be investigatory records only to the extent they were compiled during the course of the investigation of a crime. *See* I.C. § 5-14-3-2(h) defining investigatory record. *See Opinion of the Public Access Counselor 07-FC-274* (available at www.in.gov/pac/advisory) for a detailed discussion of emergency 911 calls.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA because its response was timely under the APRA but the Department may only deny access to the emergency 911 call recordings to the extent they are investigatory records.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Angelo Machuca, Jr., Chief of Police, City of East Chicago Police Department