



STATE OF INDIANA

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October 14, 2009

Mr. Lewis Richardson
140 Plaza Chica
Greenwood, IN 46143

Re: Formal Complaint 09-FC-208; Alleged Violation of the Access to Public Records Act by the Owen County Sheriff's Department

Formal Complaint 09-FC-209; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Richardson:

This advisory opinion is in response to your formal complaints¹ alleging the Owen County Sheriff's Department ("Sheriff") and Indiana State Police ("State Police") violated the Access to Public Records Act ("APRA"), Ind. Code §5-14-3-1 *et seq.*, by refusing to produce records pertaining to the investigation of a murder-suicide. For the following reasons, my opinion is that neither the Sheriff nor the State Police violated the APRA.

BACKGROUND

In your complaints against the Sheriff and State Police, respectively, you allege that you requested copies of records related to the August 7, 1996, murder-suicide case of Deanna and John Taylor. Both agencies denied your request. With respect to the Sheriff, you further state that the Owen County Clerk of Courts issued a subpoena on or about August 7, 2009 requiring the Sheriff to release copies of the records.

My office forwarded a copy of your complaints to the agencies. Each cites the APRA's exception for investigatory records of law enforcement agencies, Indiana Code § 5-14-3-4(b)(1), as the basis for its denial of your request. Each agency also responds by saying that it has provided you with access to the daily log from August 7, 1996 pertaining to the murder-suicide.

¹ I have consolidated Formal Complaint Nos. 09-FC-208 against the Owen County Sheriff's Department and 09-FC-209 against the Indiana State Police because the analysis is substantially similar.

ANALYSIS

The public policy of the APRA states that “(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. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The State Police and Sheriff are clearly public agencies 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 these agencies during regular business hours unless the public records are exempt under the APRA. I.C. § 5-14-3-3(a).

As an initial matter, I note that you state in your complaint that you submitted your request to the Sheriff in the form of a subpoena duces tecum. You also attached a copy of the purported subpoena that is dated August 7, 2009. If that subpoena is valid, rendering an opinion on this issue would be inappropriate because the continuing policy of this office is that the public access counselor should not intervene in pending litigation. *See Opinion of the Public Access Counselor 08-FC-32*. Further, if a lawsuit is filed with respect to a public access matter, the public access counselor is precluded from issuing an opinion. I.C. § 5-14-4-10(6). Thus, if you submitted a valid subpoena duces tecum to the Sheriff, this complaint is a matter for a court rather than this office. However, the Owen County Clerk’s office has informed me that you voluntarily dismissed your court case with respect to this issue on or about May 27, 2008. If no litigation is currently pending related to these complaints, I offer the following opinion.

Both the Sheriff and State Police have discretion under the APRA to deny you access to investigatory records. The investigatory records exception, found at I.C. § 5-14-3-4(b)(1), exempts public records from disclosure at the discretion of the agency “investigatory records of law enforcement agencies.” “Investigatory record” means information compiled in the course of the investigation of crime. I.C. § 5-14-3-2(h).

Here, the Sheriff and State Police have asserted that they each conducted an investigation of the murder-suicide underlying your request. Is it my opinion the agencies can sustain their burden of proof by showing the requested records are investigatory records of a law enforcement agency and thus fall squarely within the exception. *See* I.C. § 5-14-3-9(f) (the burden of proof is on the public agency to sustain its denial of access). As such, it is my opinion that neither the Sheriff nor the State Police violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that neither the Sheriff nor the State Police violated the APRA by denying you access to investigatory records pursuant to Indiana Code § 5-14-3-4(b)(1).

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Lt. Susan Dean, Legal Counsel, Indiana State Police
Sheriff Chester H. Richardson III, Owen County Sheriff