



STATE OF INDIANA

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November 4, 2009

Mr. Greg D. Sobin, DOC # 113650
P.O. Box 1111
Carlisle, IN 47838

*Re: Formal Complaint 09-FC-227; Alleged Violation of the Access to
Public Records Act by the Fort Wayne Police Department*

Dear Mr. Sobin:

This advisory opinion is in response to your formal complaint alleging that the Fort Wayne Police Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, it is my opinion that the Department did not violate the APRA.

BACKGROUND

In your complaint, you allege that you sought access to incident reports that were lodged against a person named Arlando Springer between 2003 and 2004. The Department responded within the required seven (7) day timeframe by denying your request based on Indiana Code 5-14-3-5. You allege that you are entitled to the reports and that the Department's denial was erroneous.

My office forwarded a copy of your complaint to the Department. Enclosed is the Department's response, which was submitted by the City of Fort Wayne's attorney, Carol Taylor. Ms. Taylor states that the incident reports that you sought are investigatory records of a law enforcement agency and thus exempt from disclosure under Indiana Code 5-14-3-4(b)(1). Ms. Taylor further responds by saying that the Department possesses records regarding an arrest of Mr. Springer in 2003. In accordance with Indiana Code 5-14-3-5, Ms. Taylor states that she will provide you with the public information regarding that arrest in a timely manner.

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. The Department does not contest that it is 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 exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The burden of proof for nondisclosure of a public record is on the public agency that would deny access to the record. I.C. § 5-14-3-1.

In its response, the Department relies on I.C. § 5-14-3-4(b)(1), the investigatory records exception, as it relates to the requested records. That exception provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is “information compiled in the course of the investigation of a crime.” I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations. Moreover, it does not apply only to an investigation where a crime was charged or an investigation where it was adjudicated that a crime was indeed committed. Instead, the exception applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.*

In some law enforcement agencies, though, a daily log of suspected crimes, incidents, or complaints is not maintained as a separate record. Regarding a daily log, the APRA requires the following:

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 occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 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.

I.C. § 5-14-3-5(c).

If an agency does not maintain a separate daily log, the agency must produce some record that contains the information required by I.C. § 5-14-3-5(c) to be disclosed. In some jurisdictions, the law enforcement agency will provide a copy of a police report or incident report if the agency does not maintain a daily log. The agency is only required to provide the information listed in I.C. § 5-14-3-5(c), though, and as such may redact the remainder of the information contained on the report if it was indeed compiled during the course of the investigation of a crime or is nondisclosable pursuant to another exception.

Based on these standards, the Department acted within the discretion provided to it by the APRA when it denied your request for “incident reports.” Further, although you apparently did not request such information, the Ms. Taylor states that the Department will provide you with the information required to be disclosed by I.C. § 5-14-3-5(c). It is thus my opinion that the Department has not violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Carol Taylor, City of Fort Wayne