



STATE OF INDIANA

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June 2, 2010

Ms. Lisa K. Trigg
The Terre Haute Tribune-Star
222 S. 7th Street
Terre Haute, IN 47807

*Re: Formal Complaint 10-FC-109; Alleged Violation of the Access to
Public Records Act by the Terre Haute Police Department*

Dear Ms. Trigg:

This advisory opinion is in response to your formal complaint alleging the Terre Haute Police Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records. A copy of Department's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that you requested a copy of an incident report for a shooting that occurred on March 16, 2010. The Department denied your request, claiming that the investigation of the crime was still open and witness names were included in the report. You responded to the Department's denial by citing to Section 5 of the APRA, which requires law enforcement agencies to maintain a daily log of all complaints or requests for assistance received by the agency. In response, the Department produced a daily log with some of the information required to be disclosed under Section 5. Specifically, you claim the log was deficient because it did not include the name and age of any victim, the factual circumstances surrounding the incident, or a general description of any injuries, property, or weapons involved.

My office forwarded a copy of your complaint to Department. City Attorney Chou-il Lee responded on behalf of the Department. Mr. Lee states that he denied your initial request for the incident report pursuant to Subsection 4(b)(1) of the APRA, which is the so-called "investigatory records exception" to the APRA. When you subsequently asked for information regarding the daily log described in Section 5 of the APRA, Mr. Lee produced the partial daily log and supplemented it with a redacted version of the incident report. Mr. Lee argues that Section 5 requires the Department to release a daily log but "not any document which contains the information discussed in [Section 5]."

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.” IC § 5-14-3-1. Department is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy Department’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The Department refused to provide you with the incident report pursuant to Ind. Code § 5-14-3-4(b)(1). Under that subsection of the APRA, a law enforcement agency has the discretion to withhold or release investigatory records. Investigatory records are defined by the APRA as records compiled by a law enforcement agency during the investigation of a crime. I.C. § 5-14-3-2(h). The Department maintains that the incident report you sought was such an investigatory record. In that case, the Department did not violate the APRA by refusing to provide it to you.

Although the Department has the discretion to withhold investigatory records compiled during the investigation of a crime, certain law enforcement records must be made available for inspection and copying. I.C. § 5-14-3-5. Specifically, the APRA requires law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. The following information must be maintained in the daily log:

- (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.

I.C. § 5-14-3-5(c). You claim that the log released by the Department does not satisfy the Department’s obligations under Subsection 5(c) of the APRA because it fails to provide much of the crucial information explicitly made public by that exception. As a result, the Department attempted to supplement the daily log with a redacted version of the incident report, which contains the remaining information. Counselor Neal issued an advisory opinion regarding a similar situation:

In some instances, a law enforcement agency will not maintain a separate record titled “daily log” but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log information, the agency will generally provide copies of incident reports. **In some cases, the agency will redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying.**

Opinion of the Public Access Counselor 09-FC-93 at 3 (emphasis added). Thus, if the Department released all of the information required by subsection 5(c), the Department did not violate the APRA by releasing the information via incident reports provided that such information was available within twenty-four hours of the request for assistance and the incident reports contained all information that the APRA requires to be disclosed. *Id.*

That said, nothing in the APRA requires the Department to release *all* records that contain the type of information described in Section 5. Rather, the Department is only required to release its daily log. If, however, the daily log does not contain sufficient information to comply with Section 5, the Department should supplement the daily log with information from incident reports or other sources as necessary until the aggregate of the released information satisfies the requirements of Section 5.

CONCLUSION

For the foregoing reasons, it is my opinion that if all of the daily log information required to be released pursuant to Section 5 of the APRA was not available within 24 hours of the request for assistance, the Department violated the APRA. The Department did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Chou-il Lee