



STATE OF INDIANA

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June 9, 2010

Mr. Kevin E. Smith
DOC # 160176
One Park Row
Michigan City, IN 46360

*Re: Formal Complaint 10-FC-116; Alleged Violation of the Access to
Public Records Act by the Indiana State Police*

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police (the "ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The ISP's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you requested a certified copy of a criminal history. You allege that you received no response from the ISP.

My office forwarded a copy of your complaint to the ISP. ISP Clerical Supervisor James Brown responded by stating that you must complete Form 8053, which is the form for requesting both limited and full criminal histories. Because you are seeking a criminal history on yourself, you also need to complete a fingerprint card and enclose the appropriate fees.

ANALYSIS

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 facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Thus, the ISP should have responded to your mailed request within seven (7) days of receipt.

Regarding your request for criminal history information, Indiana law provides that limited criminal history information may not be released except under specific circumstances. I.C. § 10-13-3-27. "Limited criminal history" is defined as information with respect to any arrest or criminal charge, which must include a disposition." I.C. § 10-13-3-11. Limited criminal history is subject-specific; in other words, a limited criminal history relates to a particular person about whom the information pertains. *See generally* I.C. § 10-13-3. Indiana Code § 10-13-3-31, which provides the following:

Release of data to subject person; fee; challenge of data authorized

Sec. 31. (a) Unless otherwise prohibited by law, a criminal justice agency that maintains criminal history data, upon request and proper identification of the person about whom criminal history data is maintained, shall provide that person with a copy of the person's criminal history data for a reasonable fee.

(b) Any person may challenge the information contained in the person's criminal history data file.

I.C. § 10-13-3-31. I have enclosed the appropriate form that was provided to my office by the ISP. Ind. Code § 10-13-3-30 authorizes the ISP to require that your request be submitted via that form. Moreover, that section authorizes the ISP to charge the fees as described on Form 8053. I trust that the ISP will respond appropriately to your request upon receipt of a completed Form 8053 and the required fees.

CONCLUSION

For the foregoing reasons, it is my opinion that ISP did not violate the APRA by denying you access to your criminal history information because you have not yet shown that you are entitled to access the information under Ind. Code § 10-13-3.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: James Brown