



STATE OF INDIANA

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August 20, 2010

Ms. Rose E. Phillips-Swank
1402 S. Woodlawn Ave.
Bloomington, IN 47401

*Re: Formal Complaint 10-FC-162; Alleged Violation of the Access to
Public Records Act by the Bloomington Police Department*

Dear Ms. Phillips-Swank:

This advisory opinion is in response to your formal complaint alleging the Bloomington Police Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Department's response is enclosed for your review.

BACKGROUND

In your complaint, you allege that you requested records regarding an automobile accident that occurred on June 7, 2010, from the Department. You state that you initially spoke with an employee of the Department at the front desk named "Linda," who informed you that you could obtain a copy of a video recording regarding the accident for a fee of two dollars (\$2.00). You claim that you were told you would be contacted when the copy was available. On July 7, 2010, after you had not received the copy, the Department informed you that your request was denied. You also enclosed a copy of a letter from the Department that states the Department denied your request on the basis that it is an investigatory record of a law enforcement agency that is exempt from disclosure under Indiana Code section 5-14-3-4(b)(1). That letter also informed you that the Department would provide you with all daily log information that section 5 of the APRA requires the Department to release.

Assistant City Attorney Inge Van der Cruysse responded to your complaint on behalf of the Department. She states that the Department's records show that your husband requested documentation on the accident on June 28th. He requested a crash report, which he received that day after paying the standard fee. He also requested the videotape of the accident. With respect to that request, Ms. Van der Cruysse maintains

the Department's position that if such a tape exists, it is exempt from disclosure by the investigatory records exception to the APRA.

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 does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the 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).

Here, the Department refused to provide you with the videotape pursuant to Ind. Code § 5-14-3-4(b)(1). Under that subsection of the APRA, a law enforcement agency generally has the discretion to withhold investigatory records. Investigatory records are defined by the APRA as records compiled during the investigation of a crime. I.C. § 5-14-3-2(h). The Department maintains that the records you sought were gathered during a criminal investigation by a law enforcement officer. If that is indeed the case, the Department did not violate the APRA by refusing to provide the records to you because the APRA grants the Department the discretion to withhold investigatory records.

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. IC § 5-14-3-5. The information listed in section 5 of the APRA that must be disclosed upon request is also known as the “daily log information.” In this instance, it is my understanding that the Department has not denied you access to that information.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if the videotape you sought is an investigatory record because subsection 4(b)(1) of the APRA permits law enforcement agencies to withhold access to such records at their discretion.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Inge Van der Cruysse