



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 4, 2010

Mr. Joseph W. Barr
3038 W. 850 S.
Bunker Hill, IN 46914

Re: Formal Complaint 10-FC-223; Alleged Violation of the Access to Public Records Act by the I.M.A.G.E. Drug Task Force

Dear Mr. Barr:

This advisory opinion is in response to your formal complaint alleging the I.M.A.G.E. Drug Task Force ("IMAGE") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The response from IMAGE is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on August 30, 2010, you requested public records from IMAGE. As of September 20th, you had not yet received a response.

In response to your complaint, Noble County Prosecutor Steven Clouse states on behalf of IMAGE that your records are nondisclosable under the APRA's exception for investigatory records of a law enforcement agency. He says that the records pertain to the investigation of crimes which occurred on April 9, 2009, and for which you were convicted and sentenced to a 30-year prison term with the Department of Correction. The withheld records contain information compiled during the investigation, including the identities of persons involved with the investigation. He notes that IMAGE is a multi-agency drug enforcement group that serves several counties in Indiana. Its administrative responsibilities are handled through the Auburn City Police Department.

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. An entity must be considered a "public agency" in order to be subject to the requirements of the APRA and the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.*

The party seeking to inspect and copy records has the burden of proving that the entity in possession of the records is a public agency within the meaning of the APRA. *Indianapolis Convention & Visitors Ass'n, Inc. v. Indianapolis Newspapers, Inc.* 577 N.E.2d 208, 212 (Ind. 1991) (“ICVA”). Here, it is unclear whether or not IMAGE is a public agency subject to the APRA. I have no information before me to indicate why IMAGE would fit the definition of a public agency under the APRA. Consequently, it is my opinion that the complainant has failed to meet his burden to show that the APRA applies to IMAGE.

Even if IMAGE were subject to the APRA, however, it is my opinion that the requested records are nondisclosable at IMAGE’s discretion as investigatory records of a law enforcement agency. The investigatory records exception to the APRA 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.* Based on these standards, it is my opinion that IMAGE did not violate the APRA by withholding the records compiled during the course of IMAGE’s investigation of crimes that occurred on or about April 9, 2009.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Steven T. Clouse