



# STATE OF INDIANA

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November 22, 2010

Mr. Joseph E. Allman  
445 N. Pennsylvania St., Ste. 401  
Indianapolis, IN 46204

*Re: Formal Complaint 10-FC-256; Alleged Violation of the Access to  
Public Records Act by the Cambridge City Police Department*

Dear Mr. Allman:

This advisory opinion is in response to your formal complaint alleging the Cambridge City Police Department (the "CCPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*

## BACKGROUND

In your complaint, you allege that on September 15, 2010, the CCPD received your facsimiled request for access to "documents, photographs, videotapes and tape recordings" related to the death of Ryan Pruet. As of October 20th, you had not received a response.

My office forwarded a copy of your complaint to the CCPD. As of today, we have not yet received a response.

## 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, if the CCPD failed to respond to your facsimiled request within seven days of receiving it, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the

specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, the CCPD's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the CCPD, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the CCPD has not provided a justification for withholding the records at issue here, it is my opinion that the CCPD has failed sustain its burden.

If the CCPD cannot justify withholding the records under the APRA, I encourage the CCPD to release the records to you as soon as possible. To the extent the CCPD persists in its denial of access following the issuance of an advisory opinion from this office and you believe the CCPD to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that CCPD failed to respond to your request within seven days as required by the APRA. The CCPD should either provide you with the requested records or cite to a provision of the APRA that permits or requires the CCPD to withhold them.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Chief Richard Roberts