



STATE OF INDIANA

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January 13, 2010

Mr. Michael R. Shaver
3799 Steeplechase Dr.
Carmel, IN 46032

Re: Formal Complaint 10-FC-8; Alleged Violation of the Access to Public Records Act by the Crawfordsville Police Department

Dear Mr. Shaver:

This advisory opinion is in response to your formal complaints¹ alleging the Crawfordsville Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

BACKGROUND

According to your complaint, you requested a copy of the Department's records related to the investigation of the death of Johnny Smith in October of 2008. The Department apparently disclosed some seventy-four (74) pages of records to you, but refused to disclose approximately twenty (20) email messages that were contained in Mr. Smith's college email account. Those messages were sent to the Department by a non-member of the Department. As a result, you believe that they are "not a product of the [Department's] investigation" and, therefore, not subject to the APRA's exception for investigatory records.

My office forwarded a copy of your complaints to the Department. To date, we have not received a response. Therefore, I issue the following advisory opinion based on the facts presented in your complaint.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine

¹ I note that I have consolidated your multiple complaints against the Crawfordsville Police Department into a single complaint: 10-FC-08. This advisory opinion serves as my office's response to each of those complaints.

duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purposes of 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 confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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) (emphasis added). Because the statutory language is clear that the exception does not only apply to those records created by law enforcement agencies, but also to those records compiled by law enforcement agencies during an investigation, it is my opinion that the emails obtained by the Department are “investigatory records” within the meaning of section 2(h).

Moreover, the investigatory records exception does not apply only to records of ongoing or current investigations. The exception applies regardless of whether a crime was charged or whether a crime was even 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.² 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 the Department did not violate the APRA by withholding the investigatory report.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Kurt Knecht, Crawfordsville Police Department

² While I understand and acknowledge your argument that investigatory records should be available for public inspection once an investigation is complete, neither the APRA nor previous advisory opinions from this office permit that interpretation of section 4(b)(1).