



# STATE OF INDIANA

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April 30, 2012

Lori Caldwell  
*Post-Tribune Publishing*  
1433 E. 83<sup>rd</sup> Avenue  
Merrillville, Indiana 46410

*Re: Formal Complaint 12-FC-84; Alleged Violation of the Access to Public Records Act by the East Chicago Police Department*

Dear Ms. Caldwell:

This advisory opinion is in response to your formal complaint alleging the East Chicago Police Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Department. As of today’s date, we have yet to receive a response.

## BACKGROUND

In your formal complaint, you allege on March 27, 2012 at approximately 9:40 p.m., two individuals were shot inside a house located in the 3900 block of Fir Street in East Chicago, Indiana. Department Chief Mark Becker referred the *Post-Tribune* to City Attorney Carla Morgan, in response to a request for information regarding the names of the victims and a “general description on any injuries.” On March 28, 2012 at approximately 3 p.m., Ms. Morgan was contacted and she provided that it was the City’s policy not to release such information when it involved juveniles. She said she would consider releasing additional information only after a written request was submitted. Ms. Morgan’s comments were made even after the reporter from the *Post-Tribune* advised her of the requirements of I.C. § 5-14-3-5. Mr. Morgan then suggested that the reporter obtain the information from other sources.

## 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 duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Police Department’s public records during regular business hours unless the records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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 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. *See* I.C. § 5-14-3-9(c). 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.

The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. Specifically, the APRA obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. *Id.* The following information must be maintained in the daily log:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
  - (A) the time, date, and location of occurrence;
  - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;
  - (C) the factual circumstances surrounding the incident; and
  - (D) a general description of any injuries, property, or weapons involved. I.C. § 5-14-3-5(c).

Counselor Neal issued an advisory opinion regarding a law enforcement agency's requirements pursuant to I.C. § 5-14-3-5(c):

In some instances, a law enforcement agency will not maintain a separate record titled "daily log" but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log information, the agency will generally provide copies of incident reports. In some cases, the agency will redact from the incident report any information not required

to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying. *Opinion of the Public Access Counselor 09-FC-93.*

Without the benefit of a response from the Department, it is unclear to me why your request was denied. The requirements of I.C. § 5-14-3-5 provide that the information must be created not later than twenty-four hours after the suspected crime, accident, or complaint have been reported. Further, the only exception to disclosure provided under I.C. 5-14-3-5(c)(3)(B) for victim information, is if the victim is a victim of a crime under I.C. § 35-42-4, which does not appear to be applicable. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1.

Because the Department has not provided a justification for withholding the records at issue here, it is my opinion that it has failed to sustain its burden. To the extent the Department persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Department is 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 the Department violated the APRA by failing to meet its burden in denying your request for information required to be provided by the Department pursuant to I.C. § 5-14-3-5.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is stylized and cursive.

Joseph B. Hoage  
Public Access Counselor

cc: Carla Morgan