



STATE OF INDIANA

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April 25, 2012

Archie A. Robertson
DOC 925663
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-90; Alleged Violation of the Access to Public Records Act by the Kokomo Police Department

Dear Mr. Robertson:

This advisory opinion is in response to your formal complaints alleging the Kokomo Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Captain Brian Thompson responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department on March 13, 2012 for information concerning evidence in closed cases. You further allege that as of April 9, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, the Department has failed to respond to your request in any fashion.¹

In response to your formal complaint, Captain Thompson advised that the evidence and property retained by the Department is being held for pending cases against other defendants and will not be released due to exposure/contamination. Copies of all case information related to your arrests have been provided to your attorney of record.

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.

¹ All other allegations provided in your formal complaint concerning issues beyond the Open Door Law or the Access to Public Records Act fall outside the purview of the Public Access Counselor's Office and therefore will not be addressed. See I.C. § 5-14-5-6.

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

As an initial matter I would note that the APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. A request or disclosure of records made pursuant to the Indiana Trial Rules and/or Rules of Discovery would not involve the APRA. However, the Trial Rules do not prohibit a party in litigation from making a public records request pursuant to the APRA. See *Opinion of the Public Access Counselors Office 02-FC-38; 05-FC-169; and 11-FC-265*.

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 24 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 (7) 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. Here, if the Department failed to respond to your written request submitted pursuant to the APRA within seven (7) days of its receipt, it acted contrary to the requirements of section 9 of the APRA.

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." See I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, 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.* In denying a request for investigatory records, the Department would be required to cite to I.C. § 5-14-3-4(b)(1) and provide the name and title or position of the person responsible for the denial. See I.C. § 5-14-3-9(c). From the Department's response to your formal complaint, it can be inferred that your request was being denied pursuant to investigatory records exception; however, the Department failed to cite to the specific statutory code. As such, it is my opinion that the Department acted contrary to procedural requirements of section 9 of the APRA in denying your request. As to the substance of your request, it is my

opinion that the Department did not violate the APRA as the records that you sought would be considered “investigatory records” pursuant to I.C. § 5-14-3-2(h).

CONCLUSION

For the foregoing reasons, it is my opinion that the Department acted contrary to section 9 of the APRA by failing to respond to your written request for records within seven (7) days of its receipt and by not citing to I.C. § 5-14-3-4(b)(1) in its denial of your request. However, as to the substance of your request, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Captain Brian Thompson