



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

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

September 23, 2013

Mr. Daniel Mola
Miami Correctional Facility - #219297
3038 West 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 13-FC-277; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department

Dear Mr. Mola,

This advisory opinion is in response to your formal complaint alleging the Lake County Sheriff's Department, ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded to your complaint through Mr. Michael J. Bolde, Esq. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 16, 2013. Your formal complaint has been granted priority status.

BACKGROUND

Your complaint alleges the Lake County Sheriff's Department violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

You allege that two requests dated March 13, 2013 and August 26, 2013, were submitted to the Department asking for several documents and accompanying information relating to a criminal investigation in anticipation of your upcoming trial in the Lake County Court. Also requested were personnel records of two named officers and a letter referencing the town of Winfield. You did not submit the first request to this Office.

The Department responded to your first request for records on March 14, 2013 advising you the office will provide a specific response as soon as possible. A similar undated response was sent to you pursuant to your second request asking you to complete the Department records request form.

On September 20, 2013, the Department, through Mr. Bolde, responded to your request advising you the records were being withheld under the investigatory exemption per the APRA. The other records you requested were not addressed.

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 Ind. Code § 5-14-3-1. The Lake County Sheriff’s Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). 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.

You have not provided your original March 14, 2013 request to our Office to supplement your Formal Complaint. Additionally, you have not provided a telephone number or email for which to be contacted to provide further information. Moreover, due to the priority status of your complaint, it is unlikely any postal correspondence would be received in time to consider the information. The Department responded in a timely manner to the request under Ind. Code § 5-14-3-9(b). Your March 14, 2013 request will not be addressed in this opinion other than to mention the Department *may* be in violation of that request if the hypothetical considerations below would have applied to the first request. However, it should be noted Mr. Bolde indicates the first request could not be located. Again, since you have not provided that particular request, it is deemed moot.

As to the August 26, 2013 investigatory records requested in your complaint, Counsel for the Department cited Ind. Code § 5-14-3-2(i) as justification for deeming the release of the records discretionary. You specifically ask for handwritten notes by detectives pursuant to the investigation, as well as incident reports. Counsel also references 12-FC-125 written by a previous Public Access Counselor as persuasive authority. I hereby adopt the conclusions in that opinion; (note that Ind. Code § 5-14-3-4(b)(1) has been amended, however, the statements regarding incident reports is not contradicted by the amendment anywhere else in the APRA). It states as follows:

Beyond the requirements of section 5 of the APRA, I.C. § 5-14-3-4(b)(1) provides that...investigatory records of law enforcement agencies are excepted from the requirements of disclosure at the discretion of the public agency. 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. “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.* As applicable here, to the extent that your request sought records that are considered “investigatory records” pursuant to I.C. § 5-14-3-2(h), the [Department] could properly exercise its discretion under I.C. § 5-14-3-4(b)(1) to deny your request.

Opinion of the Public Access Counselor 12-FC-125¹

Your August 26, 2013 request indicates your specific request would indeed fall under the investigatory exemption of the APRA. The assertion by the Department the records you seek are investigatory in nature and therefore are excepted from disclosure is accurate and appropriate.

Regarding your request for certain personnel files for specific officers, the APRA provides certain information is discretionary and other information should be disclosed. See I.C. § 5-14-3-4(b)(8). You requested the factual basis for any formal charges against the officers. This is public record and should be disclosed upon request.

Your final request involves a letter sent to the Town of Winfield from the Sheriff’s Department regarding interpretation of state code. Unless the contents of the letter contain deliberative material or any other privileged information, (I.C. § 5-14-3-4(b)(5)(C) the communication should also be released.

However, all of these considerations are rendered moot due to the fact the Department informed you the request was to be made on the form designated by the Department for public access requests. Ind.Code § 5-14-3-3(a)(2) allows a public agency to require the request be made on the form created by the agency. This is not to frustrate the principles of transparency or access, but rather to promote efficiency and consistency for the operations of the agency. Nonetheless, the Department is encouraged to view the request in a spirit of openness and work toward the resolution of this matter.

¹ It is worth noting that I.C. § 5-14-3-5 (a)(2) mandates disclosure of Information concerning any charges on which the arrest or summons is based. It is unclear if the General Assembly intended this provision to apply to all litigants or only jailed persons. In any event, I have made the interpreted the statute to mean this does not apply to incident reports and only to the basic charging information.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Lake County Sheriff's Department has not violated the APRA in denying your request.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal stroke extending to the left.

Luke H. Britt
Public Access Counselor

cc: John Buncich, Michael J. Bolde