



# STATE OF INDIANA

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November 12, 2013

Mr. Mark D. Altenhof, Esq.  
230 North Main St.  
Elkhart, IN 46515

*Re: Formal Complaint 13-FC-296; Alleged Violation of the Access to Public Records Act by the Indiana State Police*

Dear Mr. Altenhof,

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The ISP has responded to your complaint by way of Mr. Lt. Peter Wood. His response is enclosed 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 October 10, 2013

## BACKGROUND

Your complaint dated October 10, 2013, alleges the Indiana State Police violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

Your request was sent to State Trooper Gretchen Deal investigating a motor vehicle accident involving State Trooper William Ennis. You allege that on or about September 23, 2013, you served upon the Indiana State Police a request for the following records:

1. Copies of the accident reconstruction reports.
2. Video of Trooper Ennis' squad car showing the collision and all relevant events preceding the crash.
3. Statements taken from witnesses at the scene and their subsequent follow-up statements.
4. Photographs taken at the scene of the crash.
5. Computer Aided Dispatch (CAD) reports with Trooper Ennis' dispatch to the request for assistance from Saint Joseph County 3/7/13.

You allege you did not receive a response from the ISP acknowledging your request until October 9, 2013. The acknowledgment was also a denial of the release of the records. In that letter, Lt. Wood based the denial on the investigatory records exception of the APRA, specifically Ind. Code § 5-14-3-4(b)(1).

On October 18, 2013 the ISP, through Lt. Wood, responded to your formal complaint arguing that the records you seek are indeed investigatory in nature and the release of those records is at the discretion of the ISP due to an ongoing investigation.

### 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 Indiana State Police 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 ISP’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 the request has been received and information regarding how or when the agency intends to comply.

The ISP concedes the untimely response to your request is a denial under the APRA. Their attempts at substantial compliance came in the form of an actual denial letter on October 4, 2013, citing an active investigation as the reason for the denial. The slight delay in acknowledgement does not seem to be purposeful and would only be considered a technical violation of the APRA (but a violation, nonetheless).

Ind. Code § 5-14-3-4(1) exempts from disclosure the investigatory records of law enforcement agencies. Investigatory records are defined as information compiled in the course of investigating a crime. See Ind. Code § 5-14-3-2(i).

The ISP indicated in its response to you there was an active investigation at the time of denial. They did not identify the nature of the investigation as criminal. Your complaint suggests there cannot be a criminal investigation due to the alleged at-fault driver being deceased. The Public Access Counselor is not a finder of fact and cannot determine with authority whether there is, in fact an ongoing *criminal* investigation. If indeed there is an ongoing *criminal* investigation, then the ISP would not be required to disclose the records. If the investigation is merely of a fact-finding nature to determine a non-criminal

cause of the accident, then those records would not be exempt from disclosure under the APRA.

The ISP responded to this Office after your complaint was received and relayed information regarding a potential criminal charge filed by the Saint Joseph County Prosecutor. The response also states there are “potential issues of criminal liability involved”. They have not indicated the nature of that liability, but indicated the Prosecutor was exploring his options.

It seems curious discussions of criminal liability between the Prosecutor and ISP only came to fruition after the filing of your records request nearly six months after the accident. I am not privy to ISP’s investigatory procedures and/or policies. So for me to speculate as to the reasons why that conversation did not take place until recently would be inappropriate. Similarly, it would be equally inappropriate to imply ISP is withholding records under the guise of a criminal investigation when the records are non-criminal in nature. On the contrary and as set forth in ISP’s response, it is well-recognized by this Office that criminal investigatory records and methods are highly sensitive in nature and the premature disclosure of that information could potentially have an adverse impact on the integrity of an investigation.

I do not believe it to be applicable here, but as a matter of universal course, law enforcement agencies should be especially mindful of not using APRA as a shield for the non-disclosure of information under the investigatory records exception. As a suggestion to a civil or criminal litigant, if there is a proceeding pending in a court of law (such as the personal injury claim alluded to in your complaint), the discovery process is a much more potent and effective tool for gathering information.

#### CONCLUSION

For the foregoing reasons, if the ISP is conducting a criminal investigation into the motor vehicle incident, then it has not violated the APRA by denying your request. If the investigation is non-criminal in nature, then it should disclose the requested documents to you.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Lt. Peter Wood