



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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September 29, 2014

Mr. Brian Culp
60 S. Jefferson St.
Martinsville, IN 46151

Re: Formal Complaint 14-FC-213; Alleged Violation of the Access to Public Records Act ("APRA") by the Martinsville Police Department

Dear Mr. Culp,

This advisory opinion is in response to your formal complaint alleging the Martinsville Police Department ("MPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The MPD has responded via Chief of Police Rodger M. Wiltermood. 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 September 17, 2014.

BACKGROUND

Your complaint dated September 17, 2014, alleges the Martinsville Police Department violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b) or by acknowledging your request.

On or about September 12, 2014, you submitted a public records request to the MPD seeking documents related to a police action shooting which took place on September 5, 2014. As of the date of the filing of your complaint, you had not received a reply or acknowledgement to your request.

The MPD responded to your formal complaint arguing that two MPD officers were assisting the Morgan County Sheriff on the execution of a search warrant; however, the MPD does not have any documentation responsive to your request. Additionally, the Chief acknowledges his inexperience with public records requests and was not aware of the deadline for response.

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 Martinsville Police 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 MPD’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.

Ind. Code § 5-14-3-5(c) states:

[A law enforcement] agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (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 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

The Martinsville Police Department was assisting other law enforcement agencies on a call. MPD personnel were at the scene. While it may not have been their responsibility to develop an incident report or other records, it stands to reason if MPD officers were on a

call (regardless of the origination of the call), MPD should have a record in the form of the log described in Ind. Code § 5-14-3-5(c). This is a compulsory obligation mandated by the General Assembly to law enforcement agencies. It does not distinguish between lead investigators and agencies providing ancillary assistance. MPD was involved and therefore a log should have been created with the information in Ind. Code § 5-14-3-5(c) and disclosed within 24 hours.

Additionally, a written request must be met with a written acknowledgement within seven days if served by mail or email, which it appears this request, was. An agency must acknowledge a request within 24 hours if served in person. Additionally, according to Ind. Code § 5-14-3-5(c) if a request initially is made in writing, a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record must be provided, as well as the name and the title or position of the person responsible for the denial. The MPD failed to provide you with an acknowledgement or a written denial, both of which are contrary to APRA provisions.

CONCLUSION

It is the Opinion of the Public Access Counselor the Martinsville Police Department violated the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Chief Rodger M. Wiltermood