



STATE OF INDIANA

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January 9, 2014

Ms. Christine A. Scarpelli
250 International Dr.
Spartanburg, SC 29303

Re: Formal Complaint 14-FC-302; Alleged Violation of the Access to Public Records Act by the Evansville Police Department

Dear Ms. Scarpelli,

This advisory opinion is in response to your formal complaint alleging the Evansville Police Department ("EPD"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded via Mr. Dirck H. Stahl, Esq. 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 December 8, 2014.

BACKGROUND

Your complaint dated December 3, 2014 against the Evansville Police Department alleges the EPD violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to produce required records.

On or about November 12, 2014, you submitted a public records request to the EPD seeking a detailed copy of "any recordings of calls to 911, as well as all dispatcher notes dealing with the calls, reports and notes on reports and surveillance video relating to a strong arm robbery" pertaining to a specific incident. You received a delivery receipt on November 17, 2014; however, you did not receive an acknowledgement of the request or an explanation as to how the EPD intended to respond. On December 1, 2014 you confirmed by telephone the EPD had received your request.

The EPD responded to your formal complaint by arguing there was some confusion regarding the request and may have been routed between personnel before finally reaching the person responsible for responding to your request. The EPD also claims they may not have realized it was a public records request, as your letter cites the South Carolina Freedom of Information Act.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Evansville Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the EPD’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 EPD acknowledges your request was rerouted before it reached the person responsible for public records production and claims it may have not been on notice it was an actual public records request. Please consider the following from *Opinion of the Public Access Counselor 14-FC-147*:

[i]t is not my opinion a public records request has to be conspicuously marked as such in order to place a public employee on notice that a request has been served. Often a request will be marked as a FOIA or Freedom of Information request instead of APRA. The words APRA or public records do not have to necessarily be invoked.

Although it referenced the South Carolina Freedom of Information Act, your request was obvious enough to trigger the Indiana APRA obligations and deadlines.

Your complaint was filed before the EPD gave you an indication as to how it was going to respond to the request. As for the records themselves, the investigatory records exception to the APRA provides a law enforcement agency has the discretion to disclose or not disclose its investigatory records. See Ind. Code § 5-14-3-4(b)(1). An investigatory record is “information *compiled in the course of the investigation of a crime.*” Ind. Code § 5-14-3- 2(i) (emphasis added). Please see the recent *Opinion of the Public Access Counselor 14-FC-284*, for a detailed analysis of a request similar to yours.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Evansville Police Department has violated the Access to Public Records Act in regard to acknowledging receipt of your request within seven (7) days; however, the denial itself may be justified under the investigatory record exception to disclosure. As that has not been raised in your complaint, this is not a substantive determination.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Dirck H. Stahl, Esq.