



# STATE OF INDIANA

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August 31, 2016

Dexter Berry #114153  
4490 West Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 16-FC-175; Alleged Violation of the Access to Public Records Act by the Michigan City Police Department*

Dear Mr. Berry:

This advisory opinion is in response to your formal complaint alleging the Michigan City Police Department ("Department") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Department has responded via Sergeant Chris Yagelski. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 25, 2016.

## BACKGROUND

Your complaint dated July 15, 2016, alleges the Michigan City Police Department violated the Access to Public Records Act by failing to provide the records you requested. In June, you submitted a record request to the Department for probable cause reports, narrative reports, and suspect statements. On July 12, 2016 the Department responded to your request. The response stated that your request had been reviewed and you had been provided with what was deemed releasable.

In response to your formal complaint, the Department states the charging information and probable cause affidavits you seek are not in possession of the Department, but are available through the LaPorte County Court. As for your requests for suspect statements, these materials are categorized as investigatory records and are excepted from the public record. You also sought documentation potentially held by the Sheriff's Department. This is a separate agency and will require an additional request.

## 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 Indiana Code § 5-14-3-1.* The Michigan

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

Indiana Code § 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over the disclosure of investigatory records. An investigatory record is "information compiled in the course of the investigation of a crime." *See Indiana Code § 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*.

Statements compiled from the interviews of victims, witnesses, and suspects fall within the investigatory records category and the Department is, therefore, permitted to withhold such information. As for the other records you seek, you must file additional records requests with the appropriate agencies, namely the LaPorte County Court and the LaPorte County Sheriff's Department.

### CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Michigan City Police Department did not violate the APRA by denying you what they deem as investigatory records.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Sergeant Chris Yagelski