



STATE OF INDIANA

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November 30, 2016

Mr. Todd Sallee, Esq.
155 East Market Street, Suite 450
Indianapolis, Indiana 46204

Re: Formal Complaint 16-FC-276; Alleged Violation of the Access to Public Records Act by the Ripley County Sheriff's Office

Dear Mr. Sallee:

This advisory opinion is in response to your formal complaint alleging Ripley County Sheriff's Department ("RCSD") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. RCSD responded on November 7, 2016 via Mr. Wilmer E. Goering, II, Esq., Attorney for RCSD. His response is included 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 October 18, 2016.

BACKGROUND

Your complaint alleges on September 16, 2016, you filed a formal records request for access to "any and all records from March 1, 2015 to the present date for ONLY: Operating a Vehicle While Intoxicated Cases" with RCSD. On September 19, 2016 you received a timely and formal denial stating due to the inordinate amount of time required to fulfill your request, they will not be able to provide you with the information you seek. There was no statute reference to why you were denied. On October 18, 2016 you filed your formal complaint with this office.

Mr. Wilmer Goering, II, Esq., has responded to you on behalf of RCSD. He states he does agree with you that the response he received from RSD did not include reference to the specific statutes which your request was being denied. In response to the records you requested, the RCSD claims it does not maintain the records you seek. He further states your complaint was denied for several reasons; it lacked specificity; the request is not a public record pursuant to the APRA; and the records which you are requesting are investigatory records which RSD has the discretion not to disclose. RCSD suggests the proper method for obtaining information related to a pending criminal case is through the discovery process or the Clerk of Courts.

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 Ripley County Sheriff’s 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 RCSD’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)*.

Pursuant to Indiana Code § 5-14-3-9(d), a written request for a public records must give the statutory reason for denial. The law does not allow a public agency to deny a request simply because it is time-consuming. Therefore, the manner of denial by RCSD was inappropriate.

Improper denial notwithstanding, you take exception to the Sheriff’s Department denying your request without conducting a search. Pursuant to Indiana Code § 5-14-3-3(a)(1), a requester must make a public records request with reasonable particularity. Reasonable particularity is not defined by APRA.¹ However, it is understood there must be some standard of specificity. You are not requesting a document, but rather an indefinite set of cases and files which are not related to any one incident. In my opinion, this is not particular, but rather a universal request. You cite a number of federal cases, however, those cases are only applicable to Federal Agencies under the Freedom of Information Act (5 U.S.C. § 552) standards. Under APRA guidelines, which governing Indiana public agencies, catch-all requests are insufficient and are grounds for denial.

Furthermore, Indiana Code § 5-14-3-4(b)(1) gives law enforcement agencies the discretion to withhold or disclose 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)*. This is not to say all records maintained by the Department are considered investigatory -it must be in the course of an investigation of a crime. *See Opinion of the Public Access Counselor 14-FC-135*. As for the records you requested, many of them would fall into this category and RCSD may exercise its discretion to withhold.

Moreover, you have filed this public access request pursuant to a pending criminal matter. I have stated on several occasions this Office will not interfere with the sovereign jurisdiction of a trial court to preside over discovery matters. As your public records request is immediately germane to the pending criminal matter, such requests are best served by a third party request for production under the supervision of the judiciary.

Please do not hesitate to contact me with any questions.

¹ Please note that the statute cited by RSCD, Indiana Code § 5-14-4-3(i) is inapplicable as it governs only body worn camera footage and not law enforcement records generally.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Wilmer E Goering, II, Esq.