



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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March 14, 2016

Mr. David Lubelski - #219781
Indiana State Prison
1 Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 16-FC-28; Alleged Violation of the Access to Public Records Act by the Saint Joseph County Police Department;

Dear Mr. Lubelski:

This advisory opinion is in response to your formal complaint alleging the Saint Joseph County Police Department; Mr. Eric Tamashasky, Legal Deputy (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. The Department has responded via Mr. Tamashasky. 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 February 10, 2016.

BACKGROUND

Your complaint dated February 2, 2016 alleges the Saint Joseph County Police Department improperly denied your records request. On January 11, 2016 you requested a copy of the police report for the incident which led to your incarceration. Your request was denied under the investigatory records exemption and because the records may contain personal information of victims. On February 12, 2016 the Department responded asserting its denial was proper.

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 Saint Joseph County 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 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 Ind. Code § 5-14-3-3(a).

In its original denial, the Department cited the investigatory records exemption. 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 Ind. 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*.

As a caveat to this rule, I have stressed to law enforcement the records should be disclosed if their release would not compromise an ongoing investigation, public safety or an expectation of privacy. Only law enforcement can make that judgment call, however, I am reiterating this recommendation for the Department’s consideration.

The Saint Joseph County Police Department is a law enforcement agency. Therefore, the Department has the discretion to use the investigatory records exemption. Therefore, its denial was within the bounds of the law.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor Saint Joseph County Police Department did not violate the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Eric Tamashasky