



STATE OF INDIANA

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April 22, 2016

Mr. Trevor J. Shea
FCC Petersburg Medium
P.O. Box 1000
Petersburg, VA 23804

Re: Formal Complaint 16-FC-53; Alleged Violation of the Access to Public Records Act by the Brownsburg Police Department

Dear Mr. Shea:

This advisory opinion is in response to your formal complaint alleging the Brownsburg Police Department ("BPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. BPD has responded via Mr. Jayson Marksberry, Esq. BPD's 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 March 10, 2016.

BACKGROUND

Your complaint dated March 1, 2016, alleges Brownsburg Police Department improperly denied you access to your records.

On or about December 28, 2015, you submitted a public records request to BPD for the following records:

Any and all documents or records pertaining to Trevor Shea including, but not limited to, any and all documents or records related to his 2009/2010 criminal investigation and prosecution, his 2012 conviction, and any open, pending, or ongoing investigation.

BPD received your request on January 6, 2016. On February 9, 2016, BPD responded to, and denied, your request based upon the investigatory records exception to disclosure.

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 Brownsburg 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 BPD’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)*.

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 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.

BPD concedes it unintentionally allowed the seven (7) day acknowledgement deadline to elapse. While this is a technical violation of the APRA, your request was not ultimately prejudiced, as no records responsive to your request will be released at the discretion of the agency.

Therefore, BPD states the records it does maintain which are responsive to your request are investigatory in nature. Pursuant to Ind. Code § 5-14-3-4(b)(1), investigatory records of law enforcement agencies may be withheld at the discretion of the agency. As long as the release of the records would compromise an element of public safety, an expectation of privacy, or an ongoing investigation, such records should be withheld. To the extent any exist, you may seek any investigatory records introduced in court, however, from the court with jurisdiction over your criminal case. BPD states those justifications appropriately in its response.

CONCLUSION

Based upon the foregoing, it is the Opinion of the Public Access Counselor the Brownsburg Police Department violated the Access to Public Records Act by failing to acknowledge your request within seven (7) days, however, did not violate the APRA by ultimately withholding the requested records.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Jayson Marksberry, Esq.