

February 2, 2000

Mr. Dan M.Griffith
Post Office Box 2054
Covington, KY 41012

Re: *Advisory Opinion 00-FC-02*; Denial of Access to Investigatory Records by the Indiana State Police Department.

Dear Mr. Griffith:

This is in response to your formal complaint, which was received on January 4, 2000. You have alleged that the Indiana State Police Department ("Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you cite the following three bases for your complaint: the failure to respond to your request within the statutory time period; the Department's requests that you be more specific about the public records requested; and the failure of the Department to provide copies of any arrest reports or to definitively state whether they have any investigative records concerning you. Mr. Melvin J. Carraway, Superintendent of the Department, responded to your complaint in a letter dated January 7, 2000. A copy of his response is enclosed for your reference.

It is my opinion that the Department did fail to respond within a timely manner under the APRA to your request dated September 22, 1999, and that failure to respond constituted a denial under Indiana Code section 5-14-3-9. The Department's requests for more specificity were not a violation of the APRA. Finally, the failure to provide copies of any arrest reports based upon the information you provided or to definitively state whether the Department has any investigatory records concerning you were not violations of the APRA.

BACKGROUND

According to your complaint, you made your first written request to the Department in September, 1999. The Department responded, through its attorney, Captain Anthony Sommer, that your request was not particular enough in a letter dated September 15, 1999. You complied with the request for more specificity in a letter dated September 22, 1999. When the Department failed to respond to your September 22nd correspondence, you contacted this Office. On November 16, 1999, I contacted Captain Sommer and asked him about your request; at that time, he assured me that he would provide a written response to you. A copy of his response, which was dated November 16th, was forwarded to me, and again, Captain Sommer again asked for more particularity with respect to your request for access to public records.

In a letter dated November 23, 1999, you restated your request to the Department again as

follows:

Per yours of November 16, search arrest records and investigative reports using my name, SS number and date of birth. If the records located are exempt under Indiana law, so state in a letter.

In his response dated December 14, 1999 letter, Captain Sommer stated that the Department "has no records that it can disclose to you on your request." Captain Sommer also explained the Department does not catalog or index reports of arrests, suspected crimes, accidents or complaints by arrestee, suspect or victim names, but information concerning these matters is available under Indiana Code section 5-14-3-5. The Department does not release investigatory records as permitted under Indiana Code section 5-14-3-4(b)(1). Captain Sommer did, however, reference the state statute that permits you access to your own limited criminal history information under Indiana Code chapter 5-2-5 and he provided you with the telephone number to obtain such information.

In his response to your complaint, Superintendent Carraway admitted that the Department did not respond to your request of September 22, 1999 within the time period required under the APRA. Superintendent Carraway also stated that their continued requests for more specificity were efforts on the part of Captain Sommer to assist you. The Department denies any violation of the APRA by failing to provide you with copies of arrest records or by failing to state definitively whether they have any investigatory records concerning you. No legal authority was cited in his response, but Superintendent Carraway did maintain that the Department was not attempting to deny access to a valid public records request and their response concerning any investigatory records of the agency was appropriate.

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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Failure to Respond within Time Period under APRA

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it is my opinion that the Department failed to respond in a timely manner to your written request of September 22, 1999. This failure constituted a denial under the APRA that is actionable under Indiana Code section 5-14-3-9(d).

Requests for More Specificity

When a public records request is made, the requestor must make his or her request with reasonable particularity. Ind. Code § 5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," but a Florida court held that a public agency has the affirmative duty under their public records access statute to notify the requestor if more information is needed in order to respond to the request. *Salvador v. City of Stuart, No. 91-812 CA (Fla. 19th Cir. Ct., December 17, 1991.)* Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. See generally, Ind. Code § 5-14-3-1. It is my opinion, therefore, that the Department's requests for more specificity were appropriate under the APRA.

Response to Specific Requests for Public Records --Arrest records

Under the APRA, public agencies are required to provide access to public records of the agency and, as noted above, requests for copying or inspection of public records must "identify with reasonable particularity the record being requested." Ind. Code §5-14-3-3(a)(1). There is no requirement under the APRA that public agencies conduct searches of their records in order to respond to a public records request.

You have stated that the Department violated the APRA by failing to provide copies of any arrest records in their possession based upon the information you provided them--your name, date of birth and social security number. The Department's response was that their arrest records are not indexed by name, date of birth or social security number of the arrestee. According to Captain Sommer, if you know the approximate date of any arrest, the Department may be able to produce an arrest report. Also, Captain Sommer referred you to the limited criminal history information statute, Indiana Code chapter 5-2-5, which would permit you to obtain a list of any arrests and disposition information that is available through the central repository maintained by the Department.

With respect to your request for arrest records, the Department has clearly responded that they cannot locate records based upon your name, social security number and date of birth. The failure to produce arrest records in response to your November 23rd public records request was not a violation of

the APRA. If you can provide any information concerning approximate dates of any alleged arrests, the Department may be able to respond more directly to your request. Otherwise, you may take advantage of the limited criminal history information statute, Indiana Code chapter 5-2-5.

--Investigatory records

With respect to investigatory records of a law enforcement agency, Indiana Code section 5-14-3-4 (b)(1) permits the Department to withhold such public records at their discretion. The Department admitted in its December 14th response to you, that these records are indexed and catalogued, including the names of victims, suspects, complainants and witnesses. The question is whether the Department is obligated to tell you whether they are maintaining any investigatory records concerning you.

In general, a state agency maintaining a personal information system¹ is required to respond to a data subject² who makes a request for that personal information under the Fair Information Practices Act, Indiana Code chapter 4-1-6 (hereinafter, "FIPA".) "Personal information" is defined as follows:

any information that describes, locates, or indexes anything about an individual or that affords a basis for inferring personal characteristics about an individual including, but not limited to, his education, financial transactions, medical history, criminal or employment records, finger and voice prints, photographs, or his presence, registration, or membership in an organization or activity or admission to an institution.

Indiana Code section 4-1-6-1(b). The definition of "state agency" under the FIPA excepts the Department from the requirements of the Act.³

There is a presumption that the Indiana General Assembly, when enacting a particular piece of legislation, is aware of existing statutes on the same subject. *WorldCom Network Services, Inc. v. Thompson*, 698 N.E.2d 1233, 1239 (Ind. App. 1998) citing *Wayne Township v. Lutheran Hosp.*, 312 N.E.2d 120, 124 (Ind. App. 1974). In this case, the General Assembly added the APRA and amended the FIPA in the very same act of legislation, which clearly indicates that they were aware of the details of the two statutes. See, P.L. 19-1983.

"Further, when general and specific statutes conflict in their application to a particular subject matter, the specific statute will prevail over the general statute. *WorldCom*, at 1239. The APRA is a statute of general application providing that persons are entitled to access public records of a public agency unless those records are confidential or otherwise nondisclosable. Ind. Code §5-14-3-3(a). The FIPA applies to state agencies that maintain personal information systems, and clearly excepts the Department from the requirement to disclose information to a person who is the subject of any personal information system maintained. Ind. Code §4-1-6-1(d). The Department, therefore, is not obligated under the APRA, a statute of general application, to provide access to public records that are excepted from disclosure under a more specific statute, the FIPA.

In conclusion, it is my opinion that the Department is not subject to the requirements of the FIPA

to disclose personal information upon request of the data subject, even though the Department does maintain a personal information system with respect to investigatory records. The failure of the Department to produce any investigatory records or to definitively state whether they had any investigatory records concerning you, therefore, is not a violation of the APRA as the more specific FIPA exempts the Department from disclosure of information from any personal information systems they maintain.

CONCLUSION

It is my opinion that the Department failed to respond within a timely manner under the APRA to your request dated September 22, 1999, and that failure to respond constituted a denial under Indiana Code section 5-14-3-9. The Department's requests for more specificity were not a violation of the APRA. Finally, the failure to provide copies of any arrest reports based upon the information you provided or to definitively state whether the Department has any investigatory records concerning you were not violations of the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: : Melvin J. Carraway, Superintendent
Indiana State Police Department

1 "(A)ny recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject." Ind. Code §4-1-6-1(a).

2 The data subject is the "individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in a personal information system." Ind. Code §4-1-6-1(c).

3 For purposes of the FIPA, a state agency "means every agency, board, commission, department, bureau, or other entity of the administrative branch of Indiana state government, except those which are the responsibility of the auditor of state, treasurer of state, secretary of state, attorney general, superintendent of public instruction, and excepting the department of state police and the state-supported institutions of higher education." Ind. Code §4-1-6-1(d).

