

January 26, 2001

Mr. Kevin Lorenz
18201 Charlestown-Bethlehem Road
Charlestown, IN 47111

Re: *Advisory Opinion 01-FC-04*; ;Denial of Access to Copy of Report and Excessive Copying Fees
Charged by Sellersburg Police Department.

Dear Mr. Lorenz:

This is in response to your formal complaint, which was received on January 16, 2001. You have alleged that the Sellerburg Police Department ("Department") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you allege that you were denied access to a copy of the police report concerning the theft of your automobile and the arrest of a suspect in that theft. Instead, you were provided only a copy of a one-page information form about the theft but no information on the arrest. You were also charged \$5.00 for this copy. Chief Michael L. Stricker of the Department responded in writing to your complaint. A copy of his response is enclosed.

For the reasons set forth below, it is my opinion that the Department did not deny you access to public records concerning the theft of your automobile or the arrest of the suspect in violation of the APRA. You did receive the information required to be disclosed to you about the theft under Indiana Code section 5-14-3-5(c). Since the Department did not have any information concerning an arrest, they did not violate the APRA by failing to provide arrest information to you under Indiana Code section 5-14-3-5(a). The Department has discretion over the disclosure of any other information concerning this incident under Indiana Code section 5-14-3-4(b)(1). Finally, it is my opinion that the Department may only charge the actual cost of making a photocopy of the one-page information form as provided under Indiana Code section 5-14-3-8(d) and that the \$5.00 fee charged did exceed this statutory limitation.

BACKGROUND

According to your complaint, you requested access to police reports concerning the theft of your automobile and the arrest of the suspect who stole your automobile. You claim that Chief Stricker refused to provide copies of this information to you. Instead, you received a photocopy of a one-page document entitled "Sellersburg Police Department News Release Information Form" and charged you \$5.00 for this photocopy, which you believe to be excessive under the APRA. It is your contention that all of the information the Department has concerning the theft does not constitute an investigatory record of the Department and therefore, should have been disclosed to you.

In response to your complaint, Chief Stricker stated that the information provided in the one-page information form does comply with Indiana Code section 5-14-3-5(c). You requested arrest information under Indiana Code section 5-14-3-5(a), but since the Department had not made any arrests at the time of your request, the information form did not include arrest information. After you provided information concerning the location of the suspect, the Department contacted the law enforcement agency in that jurisdiction and the suspect was arrested. Since the Department did not make the arrest, there was no information to provide to you. According to the Chief, any additional information or reports generated, including a more detailed report prepared by the Department concerning the theft is subject to disclosure at the Department's discretion as an investigatory record under Indiana Code section 5-14-3-4(b)(1). With respect to the copying fee, Chief Stricker admits that upon review of Indiana Code section 5-14-3-8 (d), the Department was charging an excessive copy fee for the information provided under Indiana Code section 5-14-3-5(c). Accordingly, the Department has refunded the entire fee that you paid and will address the alteration of their fee schedule to ensure that their copy fee conforms to Indiana Code section 5-14-3-4(b)(8).

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).

One of the exceptions to disclosure, Indiana Code section 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over whether or not to disclose its investigatory records. Investigatory records are defined as "information compiled in the course of the investigation of a crime." Ind. Code §5-14-3-2. The Department, therefore, has discretion over the disclosure of investigatory records-they may either disclose or not disclose these public records in response to a public records request under the APRA.

Not all information compiled by a law enforcement agency, however, is subject to the investigatory records exception. The APRA, specifically Indiana Code sections 5-14-3-5(a) and (c), set forth the information about arrests and suspected crimes, accidents or complaints that must be provided upon request.

- (a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:
- (1) Information that identifies the person including his name, age, and address.
 - (2) Information concerning any charges on which the arrest or summons is based.
 - (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:

- (A) time and location of the arrest or the issuance of the summons;
- (B) investigating or arresting officer (other than an undercover officer or agent);
- and
- (C) investigating or arresting law enforcement agency.

* * *

- (c) An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:
- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
 - (2) The time and nature of the agency's response to all complaints or requests for assistance.
 - (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

Indiana Code § 5-14-3-5. [Emphasis added.]

With respect to the arrest information you requested, it is my opinion that the Department did not deny you access in violation of the APRA. Indiana Code section 5-14-3-5(a) clearly states that if a department has arrested a person, that certain information must be provided upon request. The Department had not made an arrest at the time of your request for public records; therefore they did not have any information to provide to you. The fact that another law enforcement agency may have arrested the suspect in this matter does not alter the fact that the Department had no arrest information.

You also requested information from the Department concerning the theft of your automobile and the arrest of the suspect who stole your automobile. Since the automobile was reported as stolen, the Department was required to provide you with the information listed under Indiana Code section 5-14-3-5 (c)(3). After reviewing the one-page information form provided in response to your request, it is my opinion that that the Department did comply with the APRA. Further, if the Department has other records concerning this alleged crime, the Department is within its statutory authority under Indiana Code section 5-14-3-4(b)(1) to withhold this information from you as investigatory records.

Finally, with respect to the appropriate fee for a photocopy of the one-page information form, it is my opinion that a \$5.00 fee would exceed the limitations set in the APRA for photocopies provided by local government agencies. Indiana Code section 5-14-3-8(d) provides that a local public agency may only charge the "actual cost," which "means the cost of the paper and the per-page cost for use of copying . . . equipment and does not include labor costs or overhead costs." Using this definition of actual cost, it is not likely that the actual cost of making that one photocopy to the Department would approach \$5.00. After receiving your formal complaint, the Department did review the APRA and agrees with this conclusion. Consequently, the Department refunded you the entire copy fee.

CONCLUSION

It is my opinion that the Sellerburg Police Department did not deny you access to information concerning the theft of your automobile or the arrest of a suspect under the APRA. The Department did provide information concerning the report of the theft as was required under Indiana Code section 5-14-3-5. Since the Department did not have any information concerning an arrest, they did not violate the APRA by failing to provide that to you. The Department has discretion over the disclosure of any other information concerning this incident under Indiana Code section 5-14-3-4(b)(1). It is also my opinion that the Department may only charge the actual cost of making the copy of the one-page information form as provided under Indiana Code section 5-14-3-8(d) and that the \$5.00 fee charged did exceed this statutory limitation.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Chief Michael L. Stricker, SPD
