

May 19, 2008

Ryan Sink
Haskin Lauter& LaRue
255 North Alabama Street
Indianapolis, Indiana 46204

Re: Formal Complaint 08-FC-115; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Sink:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police (“ISP”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the ISP’s response to your complaint for your reference. It is my opinion the ISP has not violated the APRA.

BACKGROUND

In your complaint you allege that you requested records from the ISP on April 24, 2008. Specifically, you requested all documents relating to the investigation into Mark Skirvin by the ISP. The ISP responded to your request by letter dated April 30. The ISP indicated that the ISP may be in possession of documents responsive to your request but that the records you request are investigatory records excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1). Because you have provided my office only copies of the communications between you and the ISP and you have not provided a narrative of your complaint, I can only assume you allege this is an inappropriate denial of access. You filed the complaint on May 5.

The ISP responded to your complaint by letter dated May 7 from Lieutenant Mark Carnell of the ISP. The ISP asserts that the requested records are investigatory records of a law enforcement agency, excepted from disclosure at the discretion of the agency pursuant to I.C. § 5-14-3-4(b)(1). The ISP indicates that as a matter of agency policy it does not release case reports or other investigatory records. The ISP asserts that the records requested were compiled during the course of investigating whether the individual may have committed official misconduct and other crimes. Finally, the ISP asserts that the records you requested are not daily log records, which are required to be created and provided upon request pursuant to I.C. § 5-14-3-5.

ANALYSIS

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

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, facsimile, or electronic mail and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the ISP received your request some time after April 24, which is the date of your request. The ISP's response to your request was dated April 30, which is well within the seven days allowed by the APRA. I.C. § 5-14-3-9(b).

The ISP has asserted the investigatory records exception in response to your request for "all documents relating to the investigation into Mark Skirvin by the Indiana State Police Department." The investigatory records exception, found at I.C. § 5-14-3-4(b)(1), excepts from disclosure at the discretion of the agency "investigatory records of law enforcement agencies." Investigatory record means information compiled in the course of the investigation of crime. I.C. § 5-14-3-2(h).

Here, the ISP has asserted that it conducted an investigation to determine whether the individual committed official misconduct or other crimes. The ISP contends the materials completed and compiled by the detective were all compiled during this investigation. Is it my opinion the ISP can sustain its burden of proof by showing the requested records are investigatory records of a lawn enforcement agency and thus fall squarely within the exception. *See I.C. § 5-14-3-9(f), placing the burden of proof on the public agency.* As such, it is my opinion the ISP has not violated the APRA.

The ISP has noted that the records you request are not "daily log" records. As the ISP acknowledges, the APRA requires a law enforcement agency to maintain a daily log that lists suspected crimes, accidents, or complaints. The log must be available for inspection and copying and must contain certain information, which is specified by I.C. § 5-14-3-5(c). I agree with the ISP that the information you request is not "daily log" information. If you would have requested the daily log information, the ISP would be required to provide that information. But nothing in I.C. § 5-14-3-5 requires the ISP to produce upon request records beyond the daily log information, like the case reports and other information compiled during the course of the investigation.

CONCLUSION

For the foregoing reasons, it is my opinion the ISP has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Lieutenant Mark Carnell, Indiana State Police