



STATE OF INDIANA

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December 8, 2008

James Lease
DOC #167856
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 08-FC-233; Alleged Violation of the Access to Public Records Act by the Huntington Police Department

Dear Mr. Lease:

This advisory opinion is in response to your formal complaint alleging the Huntington Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department has not violated the APRA.

BACKGROUND

You allege that the Department violated the APRA by denying you access to records. You allege you submitted three separate requests for copies of case reports and the Department denied access to the request each time. You do not provide specific details regarding the three denials but do enclose copies of correspondence between the Department and you. You mailed this complaint on November 3, 2008, and my office received it on November 6.

The Department responded to the complaint by letter dated November 20 from attorney John F. Branham. The Department contends it received a request from you on July 31 and responded by letter dated August 6. The Department further contends it received another request from you on September 11 and responded to the request by letter dated September 17. The Department further contends that your October 15 letter referred to the records you requested on July 31. The Department responded to the October 15 letter on November 4. In the response, the Department indicated that the request was the same as the request of July 31, which was denied on the basis the records requested are investigatory records of a law enforcement agency and as such are excepted from disclosure at the discretion of the agency, pursuant to I.C. § 5-14-3-4(b)(1).

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 Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). As such, 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. 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 or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here, the Department contends it responded to your July 31 and September 11 requests within the time for response prescribed by I.C. § 5-14-3-9(b). Nothing in the APRA requires an agency to continue to respond again and again to the same request, but here the Department did respond to your subsequent requests for the same records.

The Department contends the records you requested, two case reports, are excepted from disclosure at the discretion of the agency pursuant to I.C. § 5-14-3-4(b)(1). The "investigatory records exception" provides that the investigatory records of law enforcement agencies may be withheld from disclosure at the discretion of the agency. *Id.* An investigatory record is a record compiled during the course of the investigation of a crime. I.C. § 5-14-3-2(h). It is my opinion the case reports are records compiled during the investigation of a crime and as such may be withheld from disclosure at the Department's discretion.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: S. Thomas Emely, Huntington Chief of Police
John F. Branham, DeLaney Hartburg Roth & Garrott LLP