



STATE OF INDIANA

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January 13, 2009

Danny K. Miller, Sr.
105 East High Street
Brooklyn, Indiana 46111

Re: Formal Complaint 09-FC-5; Alleged Violation of the Access to Public Records Act by the Brooklyn Police Department

Dear Mr. Miller:

This advisory opinion is in response to your formal complaint alleging the Brooklyn 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. In my opinion you should re-submit your request to the Department during regular business hours, and the Department should provide you with a copy of the requested records unless it can demonstrate the records are excepted from disclosure under the APRA.

BACKGROUND

You filed the present complaint on December 15, 2008. You allege that you have requested from the Department access to police logs and waiver forms signed by individuals riding in Department vehicles. You allege you have been denied access to the records.

The Department responded to the complaint by letter dated December 31 from attorney Stephen Wolfe. The Department contends that you did not submit your request to the Department during regular business hours. Instead, you delivered your request to acting Town Board President Chie Chie Boles at the November 17 Town Board meeting. The Department contends that Terry Carlyle does not recall receiving the request you indicate you submitted to him at that meeting. The Department further contends you submitted the request on a complaint form rather than as a request for access to records.

Further, the Department contends the forms contain "alot of confidential information that is not allowed and should not be released to the general public.[sic]" The Department cites a number of safety concerns involved with releasing the records you have requested.

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 a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 the APRA. I.C. § 5-14-3-3(a).

The Department contends you have not submitted your request to the Department during regular business hours. Instead, you submitted the request to a member of the Town Board at a Town Board meeting. Further, the Department contends you submitted the request using a complaint form rather than the appropriate form. I have previously addressed the issue of submitting a request outside business hours. In *Opinion of the Public Access Counselor 07-FC-247*, I wrote the following:

The APRA specifically addresses requests made in person by physically appearing at the office of the public agency, by telephone, or by mail or facsimile. I.C. § 5-14-3-3; § 5-14-3-9. The APRA does not address requests made of public officials outside the office. When public officials travel outside their offices to attend meetings, events, and gatherings, they generally speak with numerous individuals. To consider any of those conversations as requests for access to records under the APRA would fall outside the letter of the law and would be quite impractical.

Id.

I reiterated this opinion in *Opinion of the Public Access Counselor 08-FC-181*, which was filed against the Brooklyn Police Department. In my opinion, your request delivered to the Town Board member on a form generally reserved for complaints was not a request conforming to the requirements of the APRA. I would advise you to resubmit your request either in person or by mail or facsimile directly to the Department. If you deliver the request in person, you should do so during regular business hours. If you send the request by mail or facsimile (or by electronic mail if the Department utilizes the technology), the request will be deemed received when the Department receives and/or opens the request.

Regarding the substantive issue presented, the Department contends the records you have requested contain confidential information or information the Department believes should be confidential. I would remind the Department that records are only deemed confidential by state or federal statute, rule of the Indiana Supreme Court, or rule promulgated by an agency which has the authority to declare records confidential. *See* I.C. § 5-14-3-4(a). Further, the agency is required if denying you access to records to cite the specific exemption(s) authorizing withholding of all or part of the records. *See* I.C. § 5-14-3-9(c)(2). While the Department's rationale for desiring to withhold access to the

records may be compelling, the APRA requires disclosure unless a specific exception to disclosure applies. I.C. § 5-14-3-3. The agency bears the burden of proof to sustain the denial of access. I.C. § 5-14-3-1. As such, it is my opinion the Department must provide access to the requested records unless it can provide the specific exemption(s) to disclosure which applies to the records.

CONCLUSION

For the foregoing reasons, it is my opinion you should re-submit your request to the Department during regular business hours, and the Department should provide you with a copy of the requested records unless it can demonstrate the records are excepted from disclosure under the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Stephen Wolfe