



# STATE OF INDIANA

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May 4, 2009

Michael Jent  
DOC #973821  
4490 West Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 09-FC-93; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department*

Dear Mr. Jent:

This advisory opinion is in response to your formal complaint alleging the Fort Wayne Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Department must make available for inspection and copying the information required to be maintained in a daily log. Further, it is my opinion any other information contained in the requested records falls under the investigatory records exception.

## BACKGROUND

You allege that on February 23, 2009 you sent to the Department a request for access to records. You specifically requested a copy of the daily incident reports of crimes committee between January 1, 2001 and December 8, 2005. You identified a number of criteria regarding the alleged crimes and alleged perpetrator. You further allege that on February 28 you received a letter from the City of Fort Wayne Law Department indicating the City would comply with your request to the extent the City maintains records responsive to the request. Further, the City denied "the remainder details/information of your request," claiming the records are investigatory records of a law enforcement agency. You later received a letter, dated March 4, from the Department indicating the "daily incident report logs" exist as electronic data and that the software will not facilitate the production of a list with the parameters you have specified. The Department contended the format in which the data is produced contains sensitive information which the Department deems to be investigatory records.

My office sent a copy of the complaint to both the Department and the City of Fort Wayne and invited both to respond to the complaint. To date my office has not received a response to the complaint.

## 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). 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).

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 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).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the Department has responded to the request within the time provided by the APRA.

Regarding the substantive issue, whether the records are required to be disclosed, the Department seems to make two separate claims: that the records are investigatory records of a law enforcement agency and as such the Department may deny disclosure and that the electronic system storing the daily incident report logs will not allow the list you request to be produced.

Regarding the Department's first claim, that the records are investigatory records, the Department relies on I.C. § 5-14-3-4(b)(1), which provided that the investigatory records of law enforcement agencies may be withheld from disclosure at the discretion of the agency. Investigatory records are records compiled during the course of the investigation of a crime. I.C. § 5-14-3-2(h). The so-called "investigatory records exception" is one of the broadest exceptions in the APRA. The exception allows a law enforcement agency to withhold nearly all records it compiles during the course of the investigation of a crime. Generally, incident reports are considered investigatory records because they are compiled during the course of the investigation of a crime. As such, the Department would be within its authority to withhold copies of incident reports.

An agency is required, though, to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. Following is a list of information that must be maintained in the daily log:

- (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.
- I.C. § 5-14-3-5(c).

In some instances, a law enforcement agency will not maintain a separate record titled “daily log” but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log information, the agency will generally provide copies of incident reports. In some cases, the agency will redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying.

Here, I do not have the benefit of a response from the Department, so I do not know whether the Department utilizes the incident reports as a daily log or whether the Department maintains a separate daily log. If the incident reports are separate from the daily log, I would agree, for the reasons previously addressed, that the incident reports are excepted from disclosure at the discretion of the agency pursuant to I.C. § 5-14-3-4(b)(1). If that is the case, the issue of whether the Department is required to sort the records as you requested is moot because the Department is not required to provide you access to the records at all. In that case you would be entitled to a copy of the daily log for the requested dates. Nothing in the APRA would require the Department to sort the information as you have requested. Instead, the Department would provide you with a copy of the daily log for each of the requested dates. The Department may charge you a fee in accordance with I.C. § 5-14-3-8 and may charge that copy fee in advance of providing you with the copies.

If the Department utilizes the daily incident reports to function as the daily log, the Department is required by I.C. § 5-14-3-5(c) to provide you access to the information previously listed. I.C. § 5-14-3-5(c) specifically requires the agency to make the information available for inspection and copying. As such, it would not be appropriate for the Department to deny you access to the information on the basis that it is stored in a way that would not allow the Department to separate the daily log information from the discretionary investigatory record information. Nothing in the APRA would require the Department to sort the information as you have requested. But, the Department would need to identify a way to provide you with a copy of the daily log information for each of the requested dates. The Department may charge you a fee in accordance with I.C. § 5-14-3-8 and may charge that copy fee in advance of providing you with the copies.

### CONCLUSION

For the foregoing reasons, it is my opinion the Department must make available for inspection and copying the information required to be maintained in a daily log. Further, it is my opinion any other information contained in the requested records falls under the investigatory records exception.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Sgt. Andrew Bubb, Fort Wayne Police Department  
Carol Taylor, City of Fort Wayne Law Department