



STATE OF INDIANA

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May 5, 2009

Louis Townsend
DOC #975350
Miami Correctional Facility
3038 West 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 09-FC-95; Alleged Violation of the Access to Public Records Act by the Anderson Police Department

Dear Mr. Townsend:

This advisory opinion is in response to your formal complaint alleging the Anderson 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 has not violated the APRA.

BACKGROUND

You allege that you requested from the Department copies of records related to your arrest on April 21, 2006. The Department, by letter dated March 27, 2009, denied you access to the records on the basis of the investigatory records exception found at I.C. § 5-14-3-4(b)(1). You contend the Department is not authorized to use the exception for the requested records.

My office sent a copy of the complaint to the Department and invited the Department to respond. 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).

The Department has denied you access to the requested records, relying on I.C. § 5-14-3-4(b)(1), which provides 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, the types of records you have requested 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 those records from disclosure.

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, the Department has indicated in the March 27 letter to you that it has provided you with the daily log records in connection with the case. As the Department contends, nothing in the APRA requires the Department to provide you copies of the investigatory records connected to the case. The Department must only provide you the daily log information. Here, the Department has fulfilled that obligation.

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: Lt. Jerry Miller, Anderson Police Department