



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 4, 2009

Lori Caldwell
Post-Tribune Publishing
1338 Broadway
Gary, Indiana 46407

Re: Formal Complaint 09-FC-39; Alleged Violation of the Access to Public Records Act by the Gary Police Department

Dear Mr. Caldwell:

This advisory opinion is in response to your formal complaint alleging the Gary Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records and failing to maintain the required information in its daily log or "bulletin" of incidents. It is my opinion the Department has violated the APRA by not maintaining and providing access to a daily log as required by I.C. § 5-14-3-5(c).

BACKGROUND

You allege that on February 2, 2009 you asked to see the Department's daily bulletin of incidents. You were shown a handwritten document containing a partial case number, a detective's name, the name of the victim or suspect, and a crime. You allege you spoke with the police chief who indicated he would provide the required information upon request until the bulletin could be corrected. You further allege that on February 3 you asked about a specific incident. Nothing was listed in the log, and when you asked about the incident, the chief's assistant told you the age of the victim and the location but could not provide any further information. On the same day, you inquired about another incident, and you were not provided with any information. You filed the present complaint on February 4.

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 APRA requires the Department to maintain a daily log of suspected crimes, accidents, or complaints. The applicable subsection provides the following:

An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

(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.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

I.C. § 5-14-3-5(c).

Here, it is my understanding you have requested access to inspect the daily log, or the "bulletin" as the Department refers to it. You allege the information you have been presented in response to your requests has been incomplete. The information you received on February 2 was missing a number of the items required by I.C. § 5-14-3-5(c) to be maintained in the log. You received even less information in response to one of your February 3 requests and no information in response to another February 3 request. Based on your allegations, it is my opinion that the Department is not fulfilling its duty to make all daily log information available not later than twenty-four hours after the crime, accident or complaint has been reported to the Department. As such, the Department has violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has violated the APRA by not maintaining and providing access to a daily log as required by I.C. § 5-14-3-5(c).

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Chief Reginald Harris, Gary Police Department