

September 10, 2003

Robert G. Beatty, 884923  
Location 33-1J  
PO Box 30  
Pendleton, Indiana 46054

Re: *Advisory Opinion 03-FC-72*; Alleged Denial of Access to Public Records by the  
Nappanee Police Department

Dear Mr. Beatty,

This advisory opinion is in response to your formal complaint against the Nappanee Police Department ("Police Department") which was received on August 13, 2003, and an update to your complaint which we received on August 18, 2003. You allege that the Nappanee Police Department has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Police Department has denied you access to information related to your arrest. Chief of Police Michael A. Anglin ("Chief Anglin") has responded in writing to your complaint, and a copy of that response is enclosed for your reference. For the reasons set forth below, it is my opinion that there has been no violation of the APRA.

#### BACKGROUND

According to your complaint, you requested from the Nappanee Police Department all public records regarding charges against you, and enclosed a money order for two dollars (\$2.00) for copying fees. You advised in your complaint that you wanted copies of documents related to your arrest pursuant to Indiana Code section 5-14-3-5 including laboratory test results. In his response to this Office, Chief Anglin states that you have "received a copy of all the paperwork" the Police Department has in reference to your arrest.

#### ANALYSIS

The public policy of the APRA states that "(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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purpose of the APRA. Ind. Code § 5-14-3-2. 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 Indiana code section 5-14-3-4. Ind. Code § 5-14-3-3(a). A public agency is generally not required to create new records in order to respond to a public records request. See generally, Ind. Code chapter 5-14-3. A person who has been denied access to public records under the APRA may file an action in circuit or superior court to compel the public agency to allow inspection and copying of the public records. Ind. Code §5-14-3-9(d).

In your complaint, you allege that Chief Anglin did not provide you with copies of certain laboratory results pursuant to Indiana Code section 5-14-3-5. In his response to your complaint to this Office, Chief Anglin states that you have received a copy of all the paperwork the Police Department has in reference to your arrest. The APRA does not require that the Police Department gather any information it does not have; if you have reason to believe that another public agency has information pertaining to the charges against you, such as the laboratory results you mention, you should contact that agency directly. On a final note, it is my recommendation that in the future the Police Department clearly advise a requestor that the record he or she requested is not in the possession of the Police Department.

#### CONCLUSION

It is my opinion that the Nappanee Police Department did not violate the Indiana Access to Public Records Act by failing to provide you with access to the laboratory results you were seeking because the Police Department does not possess those records.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor

Enclosure  
cc: Chief Michael A. Anglin, Nappanee Police Department