

February 4, 2004

Ms. Diana M. Wires
P.O. Box 849
Bedford, Indiana 47421

Re: 04-FC-07

Alleged violation of the Access to Public Records Act by the Indiana State Police

Dear Ms. Wires:

This is in response to your formal complaint alleging that the Indiana State Police (ISP) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your oral request to inspect and/or copy a videotape recorded at the Monroe County Security Center on November 6, 2003. A copy of the ISP's response to your complaint is enclosed for your reference. For the reasons set forth below, it is my opinion that the ISP did not violate the APRA when it denied you access to the videotape.

BACKGROUND

In December 2003, you contacted Indiana State Police First Sergeant Mark Clephane by telephone and requested access to a security videotape recorded at the Monroe County Security Center on November 6, 2003. According to your complaint, Sergeant Clephane contacted the Monroe County Prosecutor's Office regarding your request, and was advised to withhold disclosure of that videotape. You then filed a complaint with this office alleging that the denial violated the APRA.

The ISP responds that the denial was proper pursuant to Indiana Code 5-14-3-4(b)(1), which exempts disclosure of public records that are the investigatory records of a law enforcement agency. The ISP asserts that the videotape is evidence in a criminal investigation that is ongoing in Monroe County, and that the ISP is withholding the videotape consistent with ISP policy for maintaining the confidentiality of investigatory records. The Monroe County Prosecutor has separately advised this office that the videotape is part of an ongoing criminal investigation, and that disclosure of the tape would jeopardize the investigation.

ANALYSIS

Indiana Code 5-14-3-4(b)(1) provides that “[i]nvestigatory records of law enforcement agencies” shall be excepted from the disclosure requirements of the APRA at the discretion of the public agency. An “investigatory record” means “information compiled in the course of the investigation of a crime.” IC 5-14-3-2. The ISP avers, both through its counsel and Sergeant Clephane, that the videotape at issue was collected and processed as evidence in a “criminal investigation that is ongoing in Monroe County.” Moreover, the Monroe County Prosecutor, through its deputy, confirmed that the videotape constitutes information compiled in an ongoing criminal investigation, and that its disclosure would jeopardize that criminal investigation. In my opinion, these averments are sufficient to meet the ISP’s burden of supporting nondisclosure of the public record under Indiana Code 5-14-3-4(b)(1). Accordingly, I decline to find a violation of the APRA.

CONCLUSION

For the reasons set forth above, I find that the ISP did not violate the APRA when it denied your oral request for access to a videotape that is an investigatory record of a law enforcement agency.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Anthony Sommer, Indiana State Police