

April 12, 2004

Mr. Richard K. Corbin
No. 975153
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, Indiana 47838

*Re: 04-FC-39
Alleged violation of the Access to Public Records Act by the Indiana State Police*

Dear Mr. Corbin:

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 failed to timely respond to your request for criminal investigation laboratory records. 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 violate the APRA by failing to timely respond to your request. Because I conclude further that the documents responsive to your request fall within the investigatory records exemption to disclosure of public records, it is my further opinion that the ISP has not otherwise violated the APRA by failing to produce the documents you requested.

BACKGROUND

On February 18, 2004, and also on February 19, 2004, you submitted written requests to the Director of the Indiana State Police Laboratory in Indianapolis. The requests sought "public information" from records contained within the state police laboratory files designated Nos. 96F-1454 and 96F-1455. Specifically, you sought results and all supporting documents regarding laboratory tests conducted in those matters. With regard to File No. 96F-1454, you also sought a description of "all potentially exculpatory inferences that could be drawn from the [laboratory] results."

On March 9, 2004, having received no response to your requests, you prepared and submitted this complaint challenging the ISP's failure to respond to your requests. You assert that the failure to timely respond as well as the failure to produce responsive documents violate the APRA.

In response to your complaint, the ISP acknowledges receipt of your requests and notes that the requests were immediately forwarded to the Fort Wayne Regional Laboratory. The ISP further acknowledges that neither the Indianapolis nor the Fort Wayne laboratory sent a response until March 17, 2004, at which time you were provided with log information showing the name of the submitting agency, the dates of submission, and the ISP file numbers. That information is alleged to be the only "public information" from the records that are responsive to your requests. The ISP further avers that information responsive to the balance of your requests are "investigatory records" of a law enforcement agency subject to exemption from disclosure at the discretion of the agency. The ISP asserts that its nondisclosure of any further records is 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.

ANALYSIS

I first address the timeliness of the ISP's response to your requests. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. When a public records request is made in writing and mailed to the public agency, the public agency is required to respond to that request within seven days of receipt of the request. IC 5-14-3-9(b). A timely response does not require production of the records (or, if appropriate, a denial) within the specified period of time; however, it must at a minimum acknowledge receipt of the request and state the agency's intentions toward substantive compliance. Here, the ISP acknowledges that it received the request but did not prepare and submit a response until March 17, 2004, after it received your complaint and supporting documents from this office. While the response ultimately submitted was in the nature of a substantive response providing at least some of the information requested, it was not timely under the APRA.

That violation notwithstanding, the ISP's nondisclosure of any records responsive to your request pursuant to the investigatory records exemption does not otherwise violate the APRA. The state police laboratory is a part of the ISP and thus a law enforcement agency. 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 that the records created and included as part of the laboratory files at issue were prepared and maintained in support of a criminal investigation and thus fall within the investigatory records exemption. In my opinion, this averment meets the ISP's burden of establishing the content of the documents with adequate specificity to demonstrate that it is a record that was compiled by a law enforcement agency in the investigation of a crime, and as such falls within the investigatory records exemption codified at Indiana Code 5-14-3-4(b)(1). Moreover, there is no evidence or even allegation that the ISP is exercising its discretion to withhold the requested records in a manner that is arbitrary and capricious. Indeed, the ISP avers -- and a review of the prior opinions of this office demonstrates -- that the ISP routinely exercises its discretion to withhold its investigatory records. While you are, of course, free to pursue and use the information alleged to be contained in these records through judicial proceedings collaterally attacking your conviction, I conclude that the ISP did

not violate the APRA when it denied access to the criminal investigation laboratory records at issue here.¹

CONCLUSION

For the reasons set forth above, I find that the ISP violated the APRA when it failed to timely respond to your request. I further find that the ISP's nondisclosure of records does not otherwise violate the APRA because the records are investigatory records of a law enforcement agency and are thus exempt from disclosure pursuant to Indiana Code 5-14-3-4(b)(1).

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Anthony Sommer, Indiana State Police

¹ That said, I note that the March 17, 2004, response did not state that any records were being withheld, and did not otherwise cite or refer to the statutory exemption authorizing the ISP to withhold the investigatory records of a law enforcement agency. *See* IC 5-14-3-9(c)(2)(a) (requiring that a written denial cite to the specific statutory exemption permitting nondisclosure). Because your request limited itself to "public information" contained in the records, I do not find the ISP's response to violate this specific provision of the APRA; however, I note the omission as a reminder to public agencies that the failure to include in its response to a record request a citation to the provision of the APRA allowing nondisclosure constitutes an actionable violation of the statute notwithstanding the validity of an exemption ultimately claimed.