

April 4, 2005

Ms. Darlene Pitts  
747 Connors Drive, Apt. A  
Greenwood, IN 46143

*Re: Formal Complaint 05-FC-48; Alleged Violation of the Access to Public Records Act by the Indiana State Police*

Dear Ms. Pitts:

This is in response to your formal complaint alleging that the Indiana State Police violated the Access to Public Records Act by denying you access to a record. I find that the Indiana State Police failed to respond in a timely manner to your request for records, and failed to give you the required daily log information.

#### BACKGROUND

On January 27, 2005 you sent a written request for records to Superintendent Paul Whitesell of the Indiana State Police ("ISP"). You asked to be provided a copy of the original initial police report regarding the disappearance of your sister, Lola Katherine Fry, in November 1993. In a letter dated February 24, 2005, Chief Counsel Anthony Sommer responded for Superintendent Whitesell. He stated that the record you sought is subject to nondisclosure at the discretion of the ISP as an investigatory record. He acknowledged that you are entitled to certain information that must be made available under Ind. Code 5-14-3-5. He enclosed a copy of the News Release Information Form. You filed your complaint with my office on March 3, 2005, alleging that the information on the News Release Information Form is not sufficient under the requirements of the Access to Public Records Act.

I sent a copy of the complaint to the ISP. Mr. Sommer responded in writing; I enclose a copy of his response for your records. Mr. Sommer states that the form given to you is complete. It omits information regarding arrest and summons, and lock-up or jail information, because no one has been arrested or received in a jail for any offense connected with Ms. Fry's disappearance. With respect to daily log information, Mr. Sommer states that because no crime

has been specifically alleged, none of the information required under IC 5-14-3-5(c)(3)(A) through (D) was available within 24 hours of the incident.

## ANALYSIS

Any person may inspect and copy the public records of a public agency within the agency's regular hours of business, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). One of the records that may be excepted from disclosure at the discretion of the agency are "investigatory records of law enforcement agencies." IC 5-14-3-4(b)(1). However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of the APRA. IC 5-14-3-4(b)(1).

An "investigatory record" is one that is compiled in the course of an investigation of a crime. IC 5-14-3-2. Section 5 of the APRA contains three types of information that must be disclosed, where applicable. Certain information must be made available if a person has been arrested or summoned for an offense, and if a person is received in a jail or lock-up. IC 5-14-3-5(a) and (b), respectively. Also, an agency is required to create and maintain a daily log or record listing suspected crimes, accidents, or complaints, and make the following information available:

- (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.

IC 5-14-3-5(c).

The information that you received on the "News Release Information Form", a one-page form, contains a case number, title of case number with "missing person" filled in, the name and division number of the officer who investigated the incident, the victim's name, and the location of the crime, completed as "Indianapolis." None of the other blanks, including one for a narrative "Summary" are completed. In essence, the information that you received from the daily log is as follows:

Case number: 52-21954  
Title of case number: Missing Person  
Investigated by: Perkins, Division 52  
Victim: Lola Katherine Fry  
Location of Crime: Indianapolis

As Mr. Sommer has stated, because no one has been arrested or received in a jail, none of the information required in subsections (a) or (b) of section 5 of the APRA has been supplied in response to your request. He also states that certain information required under section 5(c), regarding the daily log, has not been supplied because the crime has not been specified.

It is mandatory that agencies maintain information in a daily log. How the agency fulfills the requirement to maintain a daily log is not prescribed in the statute; only the information that must be included on it.

The form that you were given falls far short of the information required by section 5(c). No date or time of either the request for assistance or of the occurrence appears. The time and nature of the agency's response to the request for assistance is omitted. The age of the victim, the factual circumstances surrounding the incident, and a general description of any injuries, property, or weapons involved are also missing. All the information specified in section 5(c)(3)(A) through (D) is required to be included even if the investigation has not been able to pinpoint what criminal statutes may have been violated. In this missing persons case, it seems likely that no weapons, injuries, or property may have been identified, but this must be assumed, because the blanks in which such information would appear are blank, rather than filled in with "not applicable" or "unknown" to indicate that the information is unknown rather than merely omitted.

The ISP has failed to fulfill the requirement to maintain a daily log, in violation of the Access to Public Records Act. This violation is actionable under IC 5-14-3-9(e).

Also a public agency is required to respond to a request for records within certain timeframes. If the agency receives a request for records via U.S. Mail, facsimile, or e-mail, the agency is required to respond within seven (7) calendar days of its receipt of the request, or the request is deemed denied. IC 5-14-3-9(c). In this case, the ISP failed to respond within seven days, because its response to you was dated about 25 days after it would have received your mailed request. This failure to timely respond to your request was in violation of the Access to Public Records Act.

## CONCLUSION

For the foregoing reasons, I find that Indiana State Police has violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Anthony Sommer