

October 20, 2006

*Sent Via Facsimile*

Ron Shawgo  
*The Journal Gazette*  
600 W. Main Street  
Fort Wayne, IN 46801

*Re: Formal Complaint 06-FC-163; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department*

Dear Mr. Shawgo:

This is in response to your formal complaint alleging that the Fort Wayne Police Department ("Department") violated the Access to Public Records Act by failing to timely copy records maintained in a database.

#### BACKGROUND

You filed a formal complaint on September 20, 2006 against the Department, alleging that the Department had denied electronic access to data maintained by the Department on rapes that have occurred in Fort Wayne. By way of background, you provided your request of April 4, 2006 and the various responses and communications you or your editor Mr. Craig Klugman exchanged with Carol Taylor, Assistant City Attorney. You understand that you have not timely filed a complaint regarding the denial of access to records that the Department maintains are exempt. However, you complain that the Department did not provide electronic records within a reasonable period of time.

Your original request, in relevant part, was for electronic copies of incident numbers and descriptions of each rape contained in the narrative portion of the incident report for the years 1997 to 2005. You stated "In short, I'm asking for as much electronic data about rape victims and suspects as you maintain." As you stated in your April 4 request, you are assuming that the Department maintains the information electronically, but are not sure. You invited the Department to let you know if accessing electronic data would be problematic for the Department.

On April 10, Ms. Taylor stated that some of the information is exempt under the investigatory records exception, but some information would be provided consistent with IC 5-14-3-5(c), referring to information in the daily log. Ms. Taylor also told you that if the Department was required to reprogram the computer to separate disclosable information from the nondisclosable information, the Department would charge to the *Journal Gazette* the Department's direct cost of reprogramming the computer, and cited IC 5-14-3-6(c). After receiving correspondence from you challenging the denial of access to descriptions of the rapes as an investigatory record of law enforcement, Ms. Taylor wrote on May 22 that rather than provide a "description of the rapes" she would provide only what is required in the daily log--in relevant part, the substance of complaints or requests for assistance and the factual circumstances of the incident.

On August 31, Ms. Taylor wrote you stating that the information you requested does not exist in electronic format. Instead, employees of the Department manually extracted the information from the case files and made it available to you. This letter prompted a letter from Editor Klugman challenging the unavailability of the information in electronic format, since *Journal Gazette* reporters typically have received narratives of incidents that appear to be printed out from an electronic record. As of September 15, you have informed me that following a meeting with the Department the *Journal Gazette* has been told that the information is available in electronic format and will be provided.

Hence, the gist of your complaint is that you have been denied the right to receive information in electronic format in a timely manner.

I sent a copy of your complaint to Ms. Taylor. She responded that the parties have agreed to provide the information in electronic format, and the Department had, to that end, developed a program to separate disclosable from nondisclosable information. Given the complexity of the project and the many issues regarding whether information is exempt or not, Ms. Taylor believes that the Department's response was not unreasonable.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3(d).

Investigatory records of law enforcement agencies may be excepted at the agency's discretion, except that certain information contained in section 5 of the APRA must be available for inspection and copying. IC 5-14-3-4(b)(1). This exception for investigatory records of law enforcement includes any information compiled in the course of an investigation of a crime. IC 5-14-3-2(h). According to section 5(c) of the APRA:

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.

(Emphasis supplied.)

If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under the APRA, separate the material that may be disclosed and make it available for inspection and copying. IC 5-14-3-6(a). A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system, and the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information. IC 5-14-3-6(c).

Since filing your complaint, you have reported that the Department has agreed to supply the information you are seeking, including information that had been claimed as nondisclosable under the investigatory records exception. You wrote me to ask that I issue an opinion concerning whether the August 31 letter of Ms. Taylor stating that the data does not exist in an electronic format would lead me to conclude that the Department had not made reasonable efforts to provide the data in electronic format, and whether the time that the Department produced the data was unreasonable.

Although five months is a long time to receive data from an electronic database, I do not conclude so easily that the Department did not make reasonable efforts or that the time within which the Department provided the records after separating the disclosable from the nondisclosable was unreasonable. However, I agree that Ms. Taylor's assertion that the records did not exist in electronic format appears to have been inaccurate, and likely led to delays in getting disclosable information as quickly as it could have been. The reason I stop short of finding the Department unreasonable in its efforts is the evidence from the correspondence showing that the parties disagreed strongly concerning the basis for the Department's

withholding some of the data as investigatory records of law enforcement under IC 5-14-3-4(b)(1).

As you stated, you requested all information concerning rapes in electronic format. This request was met with the Department's claim that some of the information you requested was not required to be disclosed to you, even under section 5, the daily log. This disputed information included the suspect's race, the date of birth of the rape victims, any relationship of the victim to the suspect, and case status, to name a few disputed data sets. See Carol Taylor letter of May 22, 2006. As late as September 7, the *Journal Gazette* wrote the Department that information required to be contained in the daily log had not yet been provided including the factual circumstances. Yet the *Journal Gazette* was also contending that other information could not or should not have been withheld as investigatory records of law enforcement, although not required to be maintained in the daily log.

If the Department's case files are maintained electronically, and the information that comprised the daily log was so maintained, then the daily log information at a minimum should have been disclosed sooner than it was, given the requirement in section 5 that the daily log be created within 24 hours of the call for assistance. However, it is not clear to me from the information before me whether the daily log was an electronic record or paper record, and I note that there is no requirement that the law enforcement agency create a daily log in electronic format, so long as it is created in *some* format within 24 hours of the call. If the daily log is electronic only, this should have been provided much sooner, leaving the remainder of the data that is not required from the daily log for later negotiations.

However, any other information that was in dispute would need to be negotiated to resolution before the Department could have used "reasonable efforts" to provide the data, where it would have been necessary to reprogram the computer to separate disclosable from nondisclosable information. Therefore, I find that the Department made reasonable efforts to provide the electronic record of non-daily log information.

#### CONCLUSION

For the foregoing reasons, I find that the Fort Wayne Police Department was required to maintain a daily log with certain information to be compiled within 24 hours of the call or complaint. I also find that the Department may not have produced the daily log in a timely manner. Finally, I find that the Department was required to reprogram its computer in order to separate disclosable from nondisclosable information in the database, but could not do so until the Department and the *Journal Gazette* could agree on the information to be separated.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Carol Taylor