

October 27, 2006

Sent Via Facsimile

Bruce Brightwell
1212 State Street
New Albany, IN 47150

Re: Formal Complaint 06-FC-166; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Brightwell:

This is in response to your formal complaint alleging that Indiana State Police (“ISP”) violated the Access to Public Records Act by denying you records of an investigation that the ISP is required to conduct by law. I find that the ISP did not violate the Access to Public Records Act in denying the records.

BACKGROUND

On September 18, 2006 you requested of the ISP a copy of all documents which in any manner refer or relate to the investigation by the Indiana State Police into the death of Richard Sumner, Jr. at the Perry County Jail on May 23, 2006, including any final report issued by the Indiana State Police regarding his death.

On September 26, 2006, Susan Dean, Legal Counsel to the ISP sent you a letter denying the records, citing Indiana Code 5-14-3-4(b)(1) for investigatory records of law enforcement agencies. However, the ISP did provide its Indiana State Police News Release Information Form [hereinafter, “News Release”]. After you filed your complaint challenging this denial, I sent a copy of your complaint to Ms. Dean.

Specifically, you state that you disagree with the denial because you assert that the ISP is required to conduct an investigation whenever there is a death in a jail. Thus, the ISP investigation was not information compiled in the course of the investigation of a crime, but

information compiled in the course of an investigation required by law. As you reason it, the ISP was required to investigate the matter, regardless of whether there was a belief that a crime has occurred. You point to the News Release to buttress your argument, where the News Release states that no foul play is suspected.

Ms. Dean's response to your complaint asserts that the records come within the investigatory records exception. It is of no consequence that the ultimate findings reject criminal activity; the death of unknown cause is processed as a crime scene. Also, the ISP has uniformly withheld these types of records except to other criminal justice agencies or to others through valid legal process. The News Release was provided in satisfaction of Indiana Code 5-14-3-5(c), requiring that a law enforcement agency create and provide a daily log. Accordingly, the ISP provided all disclosable records.

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). The public agency that denies a public records has the burden of proving that the record is exempt under the Access to Public Records Act, in furtherance of the public policy in favor of openness. IC 5-14-3-1.

A public agency may deny the request if the denial is in writing or by facsimile, and the denial includes the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

A public agency may except at the discretion of the agency 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 Access to Public Records Act. *Id.* The APRA defines "investigatory record" as "information compiled in the course of the investigation of a crime." IC 5-14-3-2(h).

You dispute that the investigation by the ISP of the death of an inmate at the Perry County Jail is an investigation of a crime, preferring instead to characterize it as an investigation required by law. First, you cite no law that requires this investigation. However, assuming that a statute provides for an investigation to be conducted by the ISP, you have not explained how an investigation mandated by statute necessarily precludes the application of the exemption for records compiled in the course of an investigation of a crime. In fact, I can think of at least one type of investigation that is similarly mandated by statute. In *Althaus v. Evansville Courier*, 615 N.E.2d. 441 (Ind. Ct. App. 1993), the Court of Appeals held that when the county coroner investigated a death under the Coroner's Statute¹ the records compiled in the course of the investigation of the death were subject to IC 5-14-3-4(b)(1), the investigatory records exception. *Id.* at 446. The Coroner's statute requires that the coroner conduct an investigation of how a person died when the person has died from violence, or in an apparently suspicious or unusual manner, among other circumstances. IC 36-2-14-6.

¹ Indiana Code 36-2-14-6.

Accordingly, I do not agree that a legally mandated investigation nullifies the investigatory records exception, and if the records otherwise fit the exemption, the ISP may assert the exemption for investigatory records of law enforcement when the ISP investigates a death in a county jail.

I also do not agree that the ISP cannot sustain its denial because the ISP's own release form states that no foul play is expected. The form goes on to state that this is a preliminary assessment, and the ISP is awaiting the result of the coroner's report. The ISP bears the burden of establishing that the records fit the investigatory records exemption. However, nothing set forth in your complaint indicates that the exemption would not apply to the ISP's investigation of the inmate's death in the county jail.

CONCLUSION

For the foregoing reasons, I find that the Indiana State Police did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan Dean