

February 28, 2007

Dorothy Snyder  
236 E. Pendle Street  
South Bend, IN 46637

*Re: Formal Complaint 07-FC-24; Alleged Violation of the Access to Public Records Act by the Roseland Police Department*

Dear Ms. Snyder:

This is in response to your formal complaint alleging that the Roseland Police Department ("Department") violated the Access to Public Records Act when it failed to communicate with you as promised by Friday, January 26 regarding whether it would disclose a police report to you. I find that the Department did not violate the Access to Public Records Act.

#### BACKGROUND

You sent a formal complaint to the Office of the Public Access Counselor on Monday, January 29, 2007. You allege that you requested a copy of police report #07-001 to Captain Larry Miller of the Department. This request was made in person to Captain Miller on Thursday, January 25. Captain Miller told you that as the case was pending, he would have to confer with the Prosecutor's Office to determine whether the report would be available to you. At your request, he memorialized this by letter dated January 25. No date for further response appears in this letter, but you state that Captain Miller promised to tell you the decision of the Prosecutor's office on Friday, January 26 (you allege that you were promised word on Friday, January 25, but Friday was January 26).

When you did not hear from Captain Miller as promised on Friday, January 26, you filed this complaint the following Monday.

I sent a copy of your complaint to the Department. Town attorney Jamie C. Woods responded, a copy of which is attached. He does not say anything regarding the date by which

Captain Miller promised to inform whether the case report would be disclosed. However, Mr. Woods stated that there was no unreasonable delay in giving you the records, and that even after your letter of February 11 challenging whether you had gotten the entire case report on February 8, you were assured in a timely manner that in fact all the material relating to the case report had been produced on February 8.

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, 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 receives a request for a record in person is required to respond to the requester within 24 hours or the next business day, or the request is deemed denied. *See* IC 5-14-3-9(a). Response is not necessarily production of the records. A response acknowledging that the request has been received and stating how and when the agency intends to comply is sufficient.

A record that is compiled in the course of an investigation of a crime is an investigatory record of law enforcement. IC 5-14-3-2(h). A public agency at its discretion may withhold investigatory records of law enforcement. IC 5-14-3-4(b)(1). In other words, a law enforcement agency may either disclose its investigatory records or may withhold them. However, information from the daily log must be disclosed. *See* IC 5-14-3-5(c). The police report you requested is typically deemed to be an investigatory record of law enforcement, where it is compiled in the course of an investigation of a crime (here, battery and intimidation).

The Department did not violate the APRA by failing to respond to your request. As documented, the Department told you it would confer with the Prosecutor's office prior to letting you know whether it would disclose the police report. The note does not state that the parties had agreed that the Department would follow-up the following day. Taking your unchallenged allegation as true, you allege that the Department, by failing to tell you on Friday January 26 whether it would or would not disclose the report, violated the Access to Public Records Act.

I disagree that the APRA is violated merely because the Department failed to keep its promise to inform you the next day. You put your complaint on file the following business day, Monday, January 29. Considering the circumstances at the time of the complaint, the complaint is without merit. The Department did not deny the record on January 25 by telling you it would consider whether to disclose it. This was a valid response to your request. The Department also did not implicitly deny the record by failing to live up to its promise to inform you the next day whether it would disclose the record to you. At some point, the Department's continued silence may have constituted a denial, but not at the time of your complaint.

As circumstances have developed since your complaint, the Department sent you the case file including report on February 8, 2007. The 28 pages were sent 10 working days after your request. I do not find this production to be dilatory. Counsel to the Department was consulted before concluding that you would be provided the records. My opinion may have been different had the Department taken additional time to confer about a record that is not exempt; however,

given that the Department had to consider whether to exercise its discretion to disclose the report, I find that no violation of the Access to Public Records Act occurred.

### CONCLUSION

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

Sincerely,

Karen Davis  
Public Access Counselor

cc: Jamie C. Woods