

October 4, 2007

Robert Coudret
PO Box 307
Crawfordsville, Indiana 47933

Re: Formal Complaint 07-FC-263; Alleged Violation of the Access to Public Records Act by the Montgomery County Sheriff's Department

Dear Mr. Coudret:

This is in response to your formal complaint alleging the Montgomery County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to records. A copy of the Department's response to your complaint is enclosed. I find that the Department initially charged you an excessive fee under the APRA but is working to rectify the overcharge by issuing you a refund. I find that the Department did not otherwise violate the APRA.

BACKGROUND

In your complaint you allege that you requested on August 27, 2007 from the Department access to several records. Specifically, you requested access to job title and salary records related to an officer and information regarding who "picked up an inmate in Hawaii." You allege you were provided a one page document in response to your request, and you were charged \$3.00 for that copy. You filed your complaint on September 4 alleging denial of access and excessive copy fee. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to your complaint by letter from attorney Stuart Weliever dated September 21. The Department contends you made your request to the office on August 23. The Department contends it offered to make any responsive records available to you for inspection during normal business hours but you did not come to the office to review the records. Regarding the specific records you requested, the Department contends that I.C. §5-14-3-4.3 exempts from disclosure the job title or job description of law enforcement officers. The Department further contends that I.C. §5-14-3-4(b)(22) exempts from disclosure information regarding law enforcement officers operating in an undercover capacity.

The Department further contends that it does not possess any records responsive to your request related to extradition because those records are maintained by a different public agency. Finally, regarding the Department charging you \$3.00 for one page, the Department indicates this fee, which is typically reserved for certified copies, was incorrectly charged to you. The Department is issuing you a refund in the amount of \$2.90.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. §5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity may be withheld from disclosure at the discretion of the public agency. I.C. §5-14-3-4(b)(22).

Nothing in the APRA requires a law enforcement agency to release to the public the job title or job description of law enforcement officers. I.C. §5-14-3-4.3

Here the Department received your request on August 23 and indicates it responded within five days of the request, which is within the time for response established by I.C. §5-14-3-9(b). In its response to you, the Department relied on I.C. §5-14-3-4.3 in refusing to provide the job title or job description of a law enforcement officer. Further, the Department contends that the officer about whom you request information sometimes works in an undercover capacity, and as such records related to information about the officer are exempt from disclosure under I.C. §5-14-3-4(b)(22). It is my opinion the Department has provided sufficient information to substantiate those claims and has appropriately applied the two exceptions to disclosure under the APRA.

Regarding information relating to the extradition of a prisoner, the Department has indicated it is not the public agency who maintains that information. While the APRA requires a

public agency to provide access to records not excepted from disclosure (see I.C. §5-14-3-3), it does not require an agency to provide access to records it is not responsible for maintaining. I find the Department has not violated the APRA by indicating it is not the public agency responsible for the documents you request.

Regarding the fee of \$3.00 you were charged for the one page document you received, the fiscal body or governing body of the public agency may establish a fee schedule for certification and copying of documents. The fee cannot exceed \$5 for certification and \$.10 per page or actual cost for black and white copies of documents. I.C. §5-14-3-8. Here, the Department has a \$3.00 fee for certification of documents. You were charged the \$3.00 fee inadvertently. Because you only requested and received a black and white copy and not a certified copy, you should have been charged \$.10 for the copy. The Department charged you an excessive fee under the APRA. I understand the Department has now indicated it will issue you a refund to correct the mistake.

CONCLUSION

For the foregoing reasons, I find that the Department initially charged you an excessive fee under the APRA but is working to rectify the overcharge by issuing you a refund. I find that the Department did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Stuart Weliever