

March 2, 2007

James A. Donato  
Media Placement Services, Inc.  
5041 Lyda Lane  
Colorado Springs, CO 80904

*Re: Formal Complaint 07-FC-27; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Donato:

This is in response to your formal complaint alleging that Indianapolis Metropolitan Police Department "Department" violated the Access to Public Records Act by failing to respond to your written requests for records. I find that the Department should have responded to your requests.

#### BACKGROUND

You allege that the Department did not respond at all to your requests dated and sent January 9, January 10, and January 11. Your request dated January 9 stated:

Pursuant to Indiana Public Access law, please accept this letter as my request for inspection of:

"Document: "Indiana Officer's Standard Crash Reports"

Document Date: January 8, 2007

that are in the control and custody of the police department."

Each of the two other requests were for the same document for the day before the request. You have told me that you intended the Document Date to signify the date of the crash for which the report was generated, not the date the report was filed or generated.

The gist of your complaint is that the Department has failed to issue a response as required under the Access to Public Records Act.

I sent a copy of your complaint to the Department. Responding on behalf of the Department is assistant corporation counsel Anne Brant. I have sent you a copy of her response. Ms. Brant stated that while it is true that Wanda Jacobson of the Department's Records Division did not issue a response, it is false that the Department has ignored your requests. She told me that you have an account with the Records Division whereby the Department faxes all completed reports which it receives every day. Consequently, the Department is continuously and automatically responding to your requests. Reports that are not completed and filed with the Records Division are not "public records."

There has been a recent change in procedure whereby the change from paper to electronic reports require approval of the reports by the district coordinator rather than the officer's immediate supervisor. Although in the past a report that was missing information would be passed to the Records Division, this is no longer the case. The officer is responsible for submitting a final report free of missing information. This has resulted in a delay in receiving the reports in the Records Division for each day's accidents.

Ms. Brant contends that you seem to be asking the Department to provide records that have yet to be generated. Ms. Brant also notes that your request is not specific. She stated that without more information about which crash reports you are requesting, such as the location of the accident or the individuals involved, your request is too broad. Ms. Brant asked that I issue an opinion that your request is not reasonably particular, and that the Department is not in violation of the Access to Public Records Act.

You sent me a letter in response to the Department's response. You acknowledge that you have an agreement to purchase all property damage and personal injury accident reports released by the Department. In the past there has been a discrepancy between the reports that are placed in the public basket in the Department's offices and the reports that are automatically sent to you by fax. This discrepancy has not been adequately explained, so you have found it necessary to check the public basket although you receive some of the reports by fax. You were not aware of the new system for approving final crash reports that are filed with the Records Division. In any case, you believe that the Department's computer system links all those reports for anyone to view who works for the Department during any stage of the report's preparation and approval.

You disagree that the requests of early January are in any way vague. You also believe that even the draft crash reports should be available to you for inspection and copying.

## 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 request for a record must identify the record with reasonable particularity. IC 5-14-3-3(a)(1). A public record is any material that is "created, received, retained, maintained, or filed by or with a public agency." IC 5-14-3-2(m).

A public agency that receives a request for a record by U.S. Mail, by facsimile, or by e-mail is required to respond within seven (7) days of receipt, or the request is deemed denied. IC 5-14-3-9(b). A public agency may deny a written request for a record if the denial is in writing and contains a statement of the exemption or exemptions that authorize the 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).

As I understand the matter, although you had been receiving regular faxes of the actual records, you became concerned when the crash reports that you received were more “aged” than in the past; in other words, the crash reports were at least several weeks old when you finally received them. Therefore, you decided to submit in early January a written request for a specific day’s reports. When more than seven days elapsed and the reports were still not up-to-date, you filed this complaint, alleging the Department’s failure to respond.

A response is sufficient if it acknowledges receipt of the request and states how and when the agency intends to comply. If the public agency sends the requested records within those timeframes, no additional response is required, where the agency sends the records. You contend that unless the Department had sent you the specific day’s reports within seven days, or at a minimum sent a response stating when those reports would be available, the Department violated the APRA.

The Department admits that no response was made to those specific requests, but your requests were not reasonably particular. I find it difficult to ignore the context in which your January requests were made. You and the Department have had an ongoing agreement that the Department will automatically send you crash reports, the same type of records that you specifically requested in January. The Department’s contention that the requests are not reasonably particular and your contention that a specific response should have been issued are belied by the circumstances in which your requests were made.

I disagree with the Department that your request was not reasonably particular. It has been apparent that you have been receiving all crash reports filed with the Records Division of the Department for each day. Hence, you would not be required to identify, report by report, by driver and location, which reports you seek.

Your requests must have seemed a little out of the ordinary to the Department, since you have not been submitting a request each day. However, it seems to me that the Department could be excused if it failed to discern that your request covered the yet-to-be completed reports. However, the Department should have contacted you to ask you to make your request more specific or to determine if you were asking for records that are different from those provided automatically. The Department should have responded within seven days to your specific requests, even though the Department’s failure to respond does not appear to be in bad faith.

I also find that the crash reports that are not yet completed and filed with the Records Division are nevertheless the public records of the Department. Unless an exemption applies to the “draft” crash reports, they must be disclosed upon request. The Department is not required to place draft crash reports in the public basket, because the APRA does not require that a public

agency provide its public records in this manner, i.e., without a specific request for them. You have also told me that you want the crash reports as soon as they are created because the preliminary information is valuable to you even though not all the information is accurate. The Department should provide these public records to you, and may mark them “draft” to make it clear that they are not the official crash report of the Department.

#### CONCLUSION

For the foregoing reasons, I find that the Indianapolis Metropolitan Police Department should have responded to your specific records requests. In addition, I find that the draft crash reports should be disclosed unless exempt under a specific exemption. I recommend that the Department disclose the draft reports or issue a response citing a specific exemption, if one applies.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Anne E. Brant