

March 5, 2007

Dwane G. Ingalls
1600 S. Paddock Road
Greenwood, IN 46143

Re: Formal Complaint 07-FC-28; Alleged Violation of the Access to Public Records Act by the Indianapolis Fire Department

Dear Mr. Ingalls:

This is in response to your formal complaint alleging that the Indianapolis Fire Department ("IFD") violated the Access to Public Records Act by failing to respond to your request for records. I find that the IFD failed to respond.

BACKGROUND

You filed a formal complaint alleging that the IFD did not respond to your January 8, 2007 request for the public records of the IFD. You had requested records pertaining to the response, investigation, findings and reports related to the downtown Indianapolis explosions involving Indianapolis Power and Light Company equipment, which occurred during the months of December 2004, January 2005, and September 2005.

I sent your complaint to the IFD. Chief James L. Greeson, Chief of Fire, responded to your complaint. I have enclosed a copy of the response. Chief Greeson explained that the Office of the Chief of Fire ("Office") had not received your request. However, it is difficult to determine which Office of the IFD may have received it, since the Office has no freedom of information officer.

Further, your request is not reasonably specific as to the reports you requested, since the IFD does not maintain its records about such events except by address. If you provide the exact address of the incidents, the IFD can search its records for this information. The Investigations Division has a police investigators case file that is not public information; you would

consequently need a subpoena. The fee for this report is \$7 per report and pictures would be an additional \$70.

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 is required to respond to requests received by U.S. Mail or facsimile within seven (7) days of receipt, or the request is deemed denied. A request for a record must identify the record requested with reasonable particularity. IC 5-14-3-3(a)(1).

The IFD has stated that it regrets that the request was not handled in a timely manner. It seems apparent that the IFD did receive the request even if the Office of Chief of Fire did not receive it. Because the requirement to respond applies when the public agency receives the request, not just when the proper department receives it, the IFD violated the Access to Public Records Act when it failed to respond to your request. The IFD has accepted responsibility for this omission, but I still must find noncompliance.

The IFD has now issued a response to your request. First, your request may not be reasonably particular, where the records that the IFD maintains are filed by the address of the incident. Accordingly, you must specify an address for the request if the IFD cannot perform a search of its records using any other information provided in your request. I recommend that you supply additional information or contact the IFD.

The IFD has a police investigators case file that relates to the incidents. However, the IFD states that it is not public information. A public agency that denies a record is required to specify the exemption that authorizes the agency to withhold the record. IC 5-14-3-9(c). To the extent that the complaint response is the IFD’s denial, it is not consistent with the APRA. The denial may not state merely that a file is not public information. All records must be disclosed unless exempt, and the IFD must specify the exemption that applies to the police investigators case file.

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 law enforcement agency may withhold an investigatory record of law enforcement. IC 5-14-3-4(b)(1). A law enforcement agency is:

Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff’s department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, and the security division of the state lottery commission.

IC 5-14-3-2(l)(6).

If the IFD has a department that engages in the investigation of alleged criminal offenders, then records compiled in the course of an investigation of a crime that are created, received, retained, maintained, or filed with that department may be withheld in the agency's discretion. It is the IFD's burden to show that a record fits an exemption. IC 5-14-3-1; IC 5-14-3-9(g).

Finally, I note that the fee charged by a public agency for a copy of the contents of a file is dependent on the general requirements of the APRA unless a statute provides a specific copying fee. IC 5-14-3-8(f). In the absence of a specific copying fee statute, a public agency that is not a state agency may charge a copying fee that is set by the fiscal body of the public agency. IC 5-14-3-8(d). The fee may not exceed the actual cost of the copy. *Id.* The actual cost is the cost of paper and the per-page cost for use of copying equipment and does not include labor costs or overhead costs. *Id.* A "per-report" fee for a police report is not provided for by the APRA or by any other statute that I am aware of. Also, a fee of \$70 for pictures must also be sustained by the IFD under the guidelines set forth in the APRA.

CONCLUSION

For the foregoing reasons, I find that the Indianapolis Fire Department violated the Access to Public Records Act when it failed to respond to your request for records. The Indianapolis Fire Department may require you to state your request with more specificity if it is required in order to locate the records. The Indianapolis Fire Department bears the burden to sustain its denial of the police investigators file. Copies of any records must be provided for the cost of copying provided for in the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chief James L. Greeson