

October 1, 2007

Tyrone Frazier  
Indiana State Prison  
PO Box 44  
Michigan City, Indiana 46361

*Re: Formal Complaint 07-FC-289; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Department*

Dear Mr. Frazier:

This is in response to your formal complaint alleging the Marion 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 is enclosed for your reference. I find that the Department did not violate the APRA by denying you access to records under the investigatory records exception in section 4 of the APRA.

#### BACKGROUND

You allege that you submitted a request to the Department for records pertaining to a certain case file. The Department responded to your request on September 14, denying you access to records based on the investigatory records exception in section 4 of the APRA. I.C. §5-14-3-4. You submitted this complaint on September 21, and I received it September 24, indicating you believe you should not have been denied access to the records. You requested priority status for your complaint, alleging you need the requested records for a hearing scheduled in Marion Superior Court on October 3. Pursuant to 62 IAC 1-1-3, your request for priority status has been granted.

The Department responded to your complaint by letter dated September 28 from Lauren Toppen, Assistant Corporation Counsel for the City of Indianapolis. Ms. Toppen indicated the Department appropriately denied the records you requested pursuant to the investigatory records exception. Ms. Toppen further indicates that while you did not request records required to be disclosed under section 5 of the APRA, the Department would be producing those records for you in the form of an incident report related to the cause number for which you requested the records. I.C. §5-14-3-5.

## 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." Ind. Code §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).

Investigatory records of law enforcement agencies may be excepted from disclosure requirements of section 3 at the discretion of the public agency. I.C. §5-14-3-4(b)(1). Investigatory record means information compiled in the course of the investigation of a crime. I.C. §5-14-3-2(h). The sheriff's department of a political subdivision is a law enforcement agency under I.C. §5-14-3-2(l)(6).

Certain investigatory records must be made available for inspection and copying. Specifically, certain information relating to arrest or summons, certain information relating to lock-up, and daily log information required to be maintained by a law enforcement agency must all be disclosed upon request. I.C. §5-14-3-5.

Here, you requested records related to a particular case from the Department. The Department has indicated the records requested were compiled by an officer or officers in the investigation of several crimes, namely, crimes for attempted murder, criminal confinement, and battery. I find that the Department has not violated the APRA by refusing to disclose these investigatory records.

Ms. Toppen has indicated the Department may not have considered your request for the case file to have encompassed the records required to be disclosed under section 5 of the APRA. Regardless of whether your request was intended to encompass those records, the Department is providing a related incident report which includes the information required to be disclosed under section 5 of the APRA. It is my opinion the Department is correct in providing these records required to be disclosed under the APRA.

## CONCLUSION

For the foregoing reasons, I find that the Department did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Lauren Toppen, Office of Corporation Counsel