

October 31, 2007

Harold Adams  
2500 Lincoln Drive  
Clarksville, Indiana 47129

*Re: Formal Complaint 07-FC-308; Alleged Violation of the Access to Public Records Act by the City of Madison Police Department*

Dear Mr. Adams:

This is in response to your formal complaint alleging the City of Madison Police Department ("Department"), violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records relating to the investigation of an incident involving an officer. It is my opinion the Department did not violate the APRA.

#### BACKGROUND

You allege that you submitted a request to the Department dated September 21, 2007 for copies of records related to any investigation into allegations by an individual claiming she was touched in an unwanted matter by an officer. Your request included any reports, summaries and/or narratives provided for use by the prosecuting attorney in making a determination regarding the consideration of possible charges. The Department responded to your request by letter dated September 27 from attorney Robert Barlow, II. The Department denied access to the records, claiming that since no criminal conduct was found, the incident was handled as a personnel matter. As such, the Department withheld the records from disclosure pursuant to I.C. §5-14-3-4(b)(8). You submitted your complaint to this office on October 4.

The Department did not respond to your complaint at my invitation to do so.

#### ANALYSIS

The public policy of the APRA states, "(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).

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).

Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of the public agency: .

..  
(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

I.C. §5-14-3-4(b).

Here the Department contends that because there was no criminal conduct in the matter at hand, the matter was handled as a personnel issue. The Department further contends that since the officer received an informal reprimand and forfeited three days of personal time, the action did not result in the employee being suspended, demoted, or discharged. The Department argues this means the records are not required to be disclosed under I.C. §5-14-3-4(b)(8). I would agree that since the officer was not suspended, demoted, or discharged, the requirement in I.C. §5-14-3-4(b)(8)(C) does not apply. Further, if there were no formal charges in the matter, I.C. §5-14-3-4(b)(8)(B) would not require disclosure.

You argue that because this matter was referred to the prosecuting attorney for investigation it must be made available for public inspection. If this matter constituted, as you suggest, an investigation into criminal charges, both the prosecuting attorney and the Department could withhold the records from disclosure. The APRA provides an exception to disclosure for investigatory records of law enforcement agencies. I.C. §5-14-3-4(b)(1). “Investigatory records” means information compiled in the course of the investigation of a crime. I.C. §5-14-3-2(h). Both the Department and the prosecuting attorney are law enforcement agencies under I.C. §5-14-3-2(l)(6).

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Robert L. Barlow, II, Madison City Attorney  
Chief Bob Wolf, City of Madison Police Department