

November 19, 2007

James Bradshaw  
1923 Farm Meadow Drive  
Greenwood, Indiana 46143

*Re: Formal Complaint 07-FC-321; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Bradshaw:

This is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Department's response to your complaint is enclosed. It is my opinion that while the Department's response was untimely under the APRA, the Department has not otherwise violated the APRA.

#### BACKGROUND

In your complaint you allege that you mailed to the Department on October 2, 2007 a request for copies of records related to the suspension of an officer employed by the Department. Hearing no response, you filed this complaint on October 18.

The Department responded to your complaint by letter dated November 13. The Department did not indicate whether it received your initial request or why it did not respond within seven days of receipt of the request. But the Department did include with its response a copy of a letter dated November 13 addressed to you. With the November 13 letter the Department provided you records containing the factual basis for disciplinary action resulting in the officer's suspension on two separate dates. The Department denied your request as it relates to any information contained in the records which does not contain the factual basis for disciplinary actions. As such, the Department redacted that information.

#### 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). Here the Department did not respond to your request until November 13, after receiving a copy of this complaint. Because the Department did not respond within seven days of receipt and did not contend in its response to your complaint that it never received your request, it is my opinion the Department's response was untimely under the APRA.

Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of the APRA 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).

When records contain disclosable and nondisclosable information, the agency must separate the disclosable information and make it available for inspection and copying upon request. I.C. §5-14-3-6

Regarding the Department's response to your request wherein the Department provided you with records containing the factual basis for the disciplinary actions which resulted in the officer's suspension but redacted information in the records not related to the factual basis for disciplinary action resulting in suspension, my opinion is the following: So long as the redacted information is not required to be disclosed under I.C. §5-14-3-4(b)(8)(A) or (B), the Department did not violate the APRA when it provided information required to be disclosed under I.C. §5-14-3-4(b)(8)(C) but redacted information allowed to be withheld at the discretion of the agency under I.C. §5-14-3-4(b)(8).

## CONCLUSION

For the foregoing reasons, it is my opinion that while the Department's response was untimely under the APRA, the Department has not otherwise violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Lauren Toppen, Office of Corporation Counsel, City of Indianapolis