

November 29, 2007

Robert Cron
100 Holly Trail
Roundhill, KY 42275

Re: Formal Complaint 07-FC-333; Alleged Violation of the Access to Public Records Act by the Mitchell Police Department

Dear Mr. Cron:

This advisory opinion is in response to your formal complaint alleging the Mitchell Police 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 to your complaint is enclosed for your reference. It is my opinion the Department did not violate the Access to Public Records Act.

BACKGROUND

In your complaint you allege that you sent on September 8, 2007 a request to the Department for a copy of the police report regarding the death of your cousin, Edward Beasley. You were told you would need to speak to the Chief of Police regarding the request. You further allege that at some time after that you sent an electronic mail message to the Chief requesting the record. On October 1 you appeared in person at the Department office to request a copy of the report. You were offered a copy of the incident log but declined it since it did not contain the information you seek. You were denied access to the police report. You mailed this complaint on October 26, and I received it on October 30.

The Department responded by undated letter from Chief of Police Michael Hardman. Chief Hardman indicated that according to his log you first requested the report on September 22, at which time you were advised the Department does not release investigatory records. The Chief further contends he did not receive an email from you. Chief Hardman indicated that when you appeared in the office on October 1 you requested copies of investigatory records related to Mr. Beasley’s death. Chief Hardman indicates that the case remains open and as such the records will not be released.

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.

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 police department of a political subdivision is a law enforcement agency under I.C. §5-14-3-2(1)(6).

Certain law enforcement 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 in the investigation of a crime. The Department has the discretion to withhold investigatory record pursuant to I.C. §5-14-3-4(b)(1).

Certain records of law enforcement agencies, namely arrest and lockup records and daily log information, must be disclosed upon request pursuant to I.C. §5-14-3-5. Both you and Chief Hardman affirm that the Department offered that information to you but you declined it.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Chief Michael Hardman, Mitchell Police Department