

December 4, 2007

Joseph Williams-Bey
DOC #910763
Indiana State Prison
Po Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-338; Alleged Violation of the Access to Public Records Act by the Elkhart City Police Department

Dear Mr. Williams-Bey:

This advisory opinion is in response to your formal complaint alleging the Elkhart City Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to a video recording of your arrest on May 10, 2003. It is my opinion the Department did not violate the APRA when it denied your request.

BACKGROUND

In your complaint you allege you submitted a request to the Department on October 16, 2007 and more than 25 times prior to that for a copy of the video recording of your arrest on May 10, 2003. You allege the Department did not respond to your request. You mailed this complaint on October 29, and I received it on November 5.

The Department responded to your complaint by letter dated November 5 from City Attorney Lawrence Meteiver. Mr. Meteiver indicates he received your request on October 11 and responded on October 18. Mr. Meteiver indicates he denied your request but provided the information required to be provided by I.C. §5-14-3-5.

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency 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).

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). If a request is made in writing, the public agency may deny the request if the denial is made in writing and the denial includes a statement of the specific exemption(s) authorizing the withholding of all or part of the public record and the name and title of the person responsible for the denial. I.C. §5-14-3-9(c).

A public agency may except from disclosure at the discretion of the agency “investigatory records of law enforcement agencies.” I.C. §5-14-3-4(b)(1). An investigatory record is one that is compiled in the course of an investigation of a crime. I.C. §5-14-3-2(h). A video recording could be an investigatory record of a law enforcement agency, so long as the recording involves a criminal investigation.

The investigatory records exemption also states, “However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.” I.C. §5-14-3-4(b)(1). Section 5 sets out the specific types of information that must be made available for inspection and copying related to an arrest but does not require any recording of the arrest to be disclosed. I.C. §5-14-3-5.

Here the Department has indicated it has provided you the information required to be provided by Section 5 of the APRA. The Department indicated it denied your request for a copy of the video recording. So long as the Department indicated the statutory authority for denial in the response to you, and the denial was based on the investigatory records exception, the Department did not violate the APRA by denying your request.

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the Access to Public Records Act when it denied you access to a copy of the video recording of your arrest.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Lawrence Meteiver, Elkhart City Attorney

Pamela Westlake, Elkhart Chief of Police