

April 11, 2007

Joseph Williams-Bey
#910763
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 07-FC-76; Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department

Dear Mr. Williams-Bey:

This is in response to your formal complaint alleging that the Elkhart County Sheriff's Department ("Department") violated the Access to Public Records Act by denying you certain information contained in a person's traffic citation.

BACKGROUND

You sent a request to the Department for a specific traffic citation issued to a named individual. You complain that certain information from the copy of that citation was omitted or removed. You sent me a copy of the record that you received. The five-page record contains various data fields, some blank and others filled in. Your complaint stated that the Department's denial stems from the failure to include the person's address, date of birth, social security number, eye color, hair color, skin type, telephone numbers, and license number.

I sent the Department a copy of your complaint. Mr. Trevor Wendzonka, public information supervisor for the Department sent me a response, which I attach. He stated that supplemental information was provided in response to a renewal of your request for information, in particular the person's address. In addition, the social security number is exempt under IC 5-14-3-4(a)(12), and the operator license number is confidential under IC 9-14-3.5-10. Although Mr. Wendzonka explained that the date of birth was not required to be maintained, the copy of the record enclosed with Mr. Wendzonka's response actually has the date of birth included. The person's skin type was said to have been provided, although the enclosed record does not bear any data in the "skin type" field. Finally, the eye and hair color and the telephone numbers are not collected on traffic citations. Therefore, this information has not been denied.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

If a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request, separate the material that may be disclosed and make it available for inspection and copying. IC 5-14-3-6(a).

You requested a copy of a traffic citation. You did not specify particular information in your original request. According to the Department, you were given the citation but some of the information that appeared on the original record was removed, such as the address of the person. The Department did not intend to deny you this information, and Mr. Wendzonka, the Department's chief information officer, who is responsible for handling records requests, provided the improperly omitted information to you in his augmented response.

As the Department acknowledges, the Department should have provided the address in the original record. In addition, the Department should have cited the specific exemption or exemptions that authorized it to withhold certain other information contained in the original record but redacted or removed from your copy. This includes the social security number (which is exempt under IC 5-14-3-4(a)(12)) and the driver license number (exempt under IC 9-14-3.5-10¹ for the Bureau of Motor Vehicles and under IC 5-14-3-6.5 for the police department who obtains the license number from the Bureau). Where the Department has removed information from the record because the information is exempt from disclosure, the Department is required to provide these citations. In omitting this step, the Department violated the Access to Public Records Act.

The Department's traffic citation records do not necessarily contain all the information that you believe would be in the record. There is nothing in the APRA that states what information must be in a record, except for the daily log under IC 5-14-3-5. The record you requested is not the daily log. For information such as eye and hair color, telephone number, and skin type, if this information was not collected by the Department for this particular citation, or otherwise does not appear on the original record, the information has not been denied under the APRA. Rather, the Department simply did not collect that information in this traffic citation record. There was no violation of the APRA for any information that is not on the original record. From my review of the copies you received, the above information was not removed

¹ As used in [IC 9-14-3.5], "personal information" means information that identifies a person, including an individual's:

- (1) photograph or computerized image;
- (2) Social Security number;
- (3) **driver's license or identification document number;**
- (4) name;
- (5) address (but not the 5-digit zip code);
- (6) telephone number; or
- (7) medical or disability information. IC 9-14-3.5-5 (Emphasis supplied).

from the original citation; rather, the information does not exist in the Department's original record.

CONCLUSION

For the foregoing reasons, I find that the Elkhart County Sheriff's Department violated the Access to Public Records Act when it failed to include the address on the first record you received and when it failed to include an adequate written denial of the confidential information that was removed from the record.

Sincerely,

Karen Davis
Public Access Counselor

cc: Trevor Wendzonka