

April 11, 2007

Danny T. Dunlap
#114840
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 07-FC-77; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Dunlap:

This is in response to your formal complaint alleging that the Indiana State Police (“ISP”) violated the Access to Public Records Act by denying your request for records. I find that the ISP did not violate the Access to Public Records Act by refusing your request for its investigatory records.

BACKGROUND

You complain that the denial you received from the ISP is unjustified. The ISP sent you a letter on January 9 denying your request because the records are investigative records and are not subject to disclosure under IC 5-14-3. However, if you could secure a subpoena or court order, the records would be released. You requested “all documents, reports, affidavits, memoranda” and other material that the ISP submitted to the prosecutor’s office.

The ISP, by its legal counsel Mr. Mark Carnell, submitted a response to your complaint, which I enclose. Mr. Carnell stated that since your request did not give a case number, you failed to identify the records with reasonable particularity. With some degree of searching, there is a homicide investigation that the ISP believes may be the subject of your request. In any event, given the nature of the request, all the material sent to the prosecutor’s office would fall within the investigatory records exception and is therefore exempt under IC 5-14-3-4(b)(1). Because the ISP did respond to deny the records, the ISP did not violate the Access to Public Records Act.

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 the 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 is made orally, either in person or by telephone, a public agency may deny the request orally. However, 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 the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

You do not complain that the denial was not timely, only that it was not justified. A law enforcement agency may deny investigatory records of law enforcement, in the agency’s discretion. IC 5-14-3-4(b)(1). These are defined as “information compiled in the course of the investigation of a crime.” IC 5-14-3-2(h). Your request for the records regarding a homicide investigation that were sent to the prosecutor would fall within the exemption for investigatory records of law enforcement. Therefore, it was not a violation of the Access to Public Records Act for the ISP to deny these records, subject to disclosure of the daily log provided in section 5. If you want information provided in the daily log, you may request it and the ISP would have to disclose it.¹

I recommend in the future that the ISP deny records by citation to the specific exemption that applies to the records. For investigatory records, that would be IC 5-14-3-4(b)(1). This citation did not appear in the January 9 denial letter of Mr. Carnell.

¹ (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
(2) The time and nature of the agency's response to all complaints or requests for assistance.
(3) If the incident involves an alleged crime or infraction:
(A) the time, date, and location of occurrence;
(B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;
(C) the factual circumstances surrounding the incident; and
(D) a general description of any injuries, property, or weapons involved.

CONCLUSION

For the foregoing reasons, I find that the Indiana State Police did not violate the Access to Public Records Act by denying you its investigatory records, but the Indiana State Police should have provided a more complete citation to the authority for withholding the records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mark Carnell