



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 2, 2010

Mr. Demetrius D. White
W.V.C.F
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 10-FC-108; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Mr. White:

This advisory opinion is in response to your formal complaint alleging the Fort Wayne Police Department ("FWPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records. A copy of FWPD's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that you have made several requests to FWPD for a complete copy of a complete criminal case file. FWPD most recently denied your request for the file on April 20, 2010. You have received eight pages of the requested records, which total forty-six pages.

My office forwarded a copy of your complaint to FWPD for a response. On behalf of the FWPD, Troy Kiefer, associate attorney, sent a response to your complaint stating that your requests for case files 08F060688 and 98F020242 were answered by the FWPD on April 20, 2010 and April 30, 2010 respectively. Mr. Kiefer notes that FWPD did provide you with a portion of your requested documents. Mr. Kiefer states that the FWPD declined to provide you with the remainder of the files requested under IC § 5-14-3-4(b)(1); stating that "access to the documents is denied because they consist of investigatory records of a law enforcement agency and thus are exempted from the disclosure requirements of IC § 5-14-3."

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.” IC § 5-14-3-1. FWPD is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy FWPD’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the FWPD provided you with the basic information from the police reports, including the arrested party’s name, age, address, the time and location of the arrest or summons, the name of the investigating or arresting officer, and the name of the agency in compliance with section 5 of the APRA. The FWPD refused to provide you with the entire file pursuant to Ind. Code § 5-14-3-4(b)(1). Under that subsection of the APRA, a law enforcement agency generally has the discretion to withhold investigatory records. Investigatory records are defined by the APRA as records compiled during the investigation of a crime. I.C. § 5-14-3-2(h). The FWPD maintains that the records you sought were gathered during a criminal investigation by a law enforcement officer. In that case, the FWPD did not violate the APRA by refusing to provide the records to you because the APRA grants the FWPD the discretion to withhold investigatory records.

Although the FWPD has the discretion to withhold investigatory records compiled during the investigation of a crime, certain law enforcement records must be made available for inspection and copying. IC § 5-14-3-5. In this instance, the FWPD provided you with the basic information from the police reports that were disclosable. “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). Here, the FWPD separated the information in the police report that was not part of the investigatory record and provided you with a copy. The information that was not disclosed by the FWPD was considered an investigatory record and thus withheld at the discretion of the FWPD. Thus, the reason for the FWPD sending you only eight pages of a forty-six page document.

CONCLUSION

For the foregoing reasons, it is my opinion that the FWPD did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Troy Kiefer