



STATE OF INDIANA

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June 18, 2010

Mr. William H. Walden
8242 Calumet Ave.
Munster, IN 46321

Re: Formal Complaint 10-FC-137; Alleged Violation of the Access to Public Records Act by the Town of Munster

Dear Mr. Walden:

This advisory opinion is in response to your formal complaint alleging the Town of Munster ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

BACKGROUND

According to your complaint, on April 28, 2010, you requested access to "any and all records in the possession of any agency of the Town of Munster regarding the investigation of your client" for damages to a fire truck. By letter dated May 3, 2010, the Town's attorney denied your request and cited to Ind. Code § 5-14-3-4(b) and a resolution of the Town. You state, however, that the Town provided a copy of your client's statement to the Munster Police Department ("MPD").

My office forwarded a copy of your complaints to the Town. The Town's attorney, Eugene M. Feingold, states on the Town's behalf that the MPD conducted a criminal investigation related to the damaged fire truck. In the course of its investigation, MPD acquired statements from several individuals. Mr. Feingold claims that the Town did provide you with a copy of your client's written statement to the MPD. He claims that the remainder of the records you requested are investigatory records. As such, they are exempt from disclosure at the discretion of the Town under Ind. Code § 5-14-3-4(b)(1).

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.” Ind. Code § 5-14-3-1. The Town 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 Town’s public records 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).

Mr. Feingold claims that the records you requested are nondisclosable at the Town’s discretion under the so-called investigatory records exception to the APRA. *See* I.C. § 5-14-3-4(b)(1). The investigatory records exception provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is “information *compiled* in the course of the investigation of a crime.” I.C. § 5-14-3-2(h) (emphasis added). Because the statutory language is clear that the exception does not only apply to those records created by law enforcement agencies, but also to those records compiled by law enforcement agencies during an investigation, it is my opinion that the emails obtained by the Town are “investigatory records” within the meaning of section 2(h).

I note that although Mr. Feingold states the investigation of the fire truck matter is ongoing, the investigatory records exception does not apply only to records of ongoing or current investigations. The exception applies regardless of whether a crime was charged or whether a crime was even committed. In other words, it applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* Based on these standards, it is my opinion that the Town did not violate the APRA by withholding the records.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Eugene M. Feingold