



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 4, 2010

Mr. Michael J. Shepard
P.O. Box 488
Boonville, IN 47601

Re: Formal Complaint 10-FC-201; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Sheriff's Office

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you allege that you sent a request to the Sheriff seeking access to an "incident/case report referencing a tape recorded interview" that was taken by a detective at the Vanderburgh County Jail on February 3, 2010. You requested the record on August 19, 2010, but had not heard back from the Sheriff as of August 30th. However, on June 2nd, in response to a similar request, Sgt. Noah Robinson of the Sheriff's office informed you that no incident report could be located that was responsive to your request. Sgt. Robinson stated that the audio file from the interview would be available to you in compact disc format. However, the audio file was later withheld by the Sheriff under the investigatory records exception to the APRA. You believe that the record is not an investigatory record "because there is no report attached, therefore no investigation [occurred]."

Attorney Jean M. Blanton responded to your complaint on behalf of the Sheriff. Ms. Blanton states that the audio tape of the interview was recorded in conjunction with an investigation that began after you advised medical staff of your belief that you might have been sexually assaulted. The Sheriff's staff decided to release the tape to you initially, but reconsidered due to its status as an investigatory record. Ms. Blanton notes that the APRA does not require investigating officers to produce a written report in order to classify investigatory records as such. She cites to the Indiana Court of Appeals' decision in *Unincorporated Operating Div. of Ind. Newspapers, Inc. v. Trs. Of Ind. Univ.*, 787 N.E.2d 893 (Ind. Ct. App. 2003), in which the court held that materials were still

subject to non-disclosure at the agency's discretion even though it was unlikely that the investigation would ever lead to prosecution.

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." I.C. § 5-14-3-1. The Sheriff is 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 Sheriff's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Ind. Code § 5-14-3-4(b)(1) provides that "[i]nvestigatory records of law enforcement agencies" shall be excepted from the disclosure requirements of the APRA at the discretion of the public agency. An "investigatory record" means "information compiled in the course of the investigation of a crime." I.C. § 5-14-3-2. There is no requirement that the investigation be pending or closed; all investigatory records of the law enforcement agency may be exempted from disclosure under this provision at the discretion of the law enforcement agency. *See Opinion of the Public Access Counselor 04-FC-28.*

The Sheriff asserts that the responsive record in this matter is a criminal investigation report prepared by its criminal investigations personnel in an investigation a report you made concerning a possible sexual assault. This averment meets the Sheriff's burden of establishing the content of the document with adequate specificity to demonstrate that it is a record that was compiled by a law enforcement agency in the investigation of a crime, and as such falls within the investigatory records exemption codified in subsection 4(b)(1) of the APRA. Moreover, there is no evidence or even allegation that the Sheriff is exercising its discretion to withhold the requested record in a manner that is arbitrary and capricious. Accordingly, it is my opinion that the Sheriff did not violate the APRA when it denied access to the audiotape at issue here.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Jean M. Blanton