



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

November 22, 2010

Mr. Joseph E. Allman
445 N. Pennsylvania St., Ste. 401
Indianapolis, IN 46204

*Re: Formal Complaint 10-FC-257; Alleged Violation of the Access to
Public Records Act by the Indiana State Police*

Dear Mr. Allman:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police (the "ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The ISP's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on September 20, 2010, the ISP received your request for access to "documents, photographs, videotapes and tape recordings" related to the death of Ryan Pruet. As of October 20th, you had not received a response.

My office forwarded a copy of your complaint to the ISP. ISP Maj. Douglas Shelton of the ISP's Records Division responded. He states that a member of the division staff signed for your request, but she was notified the same day of an emergency family illness and has been off of work since the afternoon of September 20th. The employee apparently failed to forward your request to another division staff member before leaving work. As to the substance of your request, Maj. Shelton claims that the records are excepted from disclosure under the investigatory records exception to the APRA.

ANALYSIS

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or

when the agency intends to comply. Thus, the ISP should have responded to your mailed request within seven (7) days of receipt. That said, I trust that the ISP's failure to respond to your request was unintentional and a result of the ISP employee's personal emergency.

The investigatory records exception to the APRA 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). The investigatory records exception does not apply only to records of ongoing or current investigations. Moreover, it does not apply only to an investigation where a crime was charged or an investigation where it was adjudicated that a crime was indeed committed. Instead, the exception 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.* Maj. Shelton avers that the withheld records are part of an official criminal case file of the ISP. Consequently, it is my opinion that ISP did not violate the APRA by withholding them.

CONCLUSION

For the foregoing reasons, it is my opinion that ISP should have responded to your request within seven days, but did not otherwise violate the APRA because the records you requested are exempt from disclosure under subsection 4(b)(1) of the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Maj. Douglas E. Shelton