



STATE OF INDIANA

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December 3, 2010

Mr. Michael J. Shepard
ISP # 181080
Putnamville Correctional Facility
1946 W. U.S. Hwy. 40
Greencastle, IN 46135

*Re: Formal Complaint 10-FC-275; Alleged Violation of the Access to
Public Records Act by the Indiana State Police*

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The ISP's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege¹ that ISP denied your request for a copy of a personal criminal history record and a copy of a criminal complaint referencing official misconduct by an officer of the Evansville Police Department ("EPD").

In response to your complaint, ISP Lieutenant Mark Carnell states that the ISP will release a copy of the limited criminal history that you requested upon receipt of the form required pursuant to I.C. § 10-13-3-30 and the applicable fee. ISP has forwarded you the appropriate form and awaits your response. If you are declared indigent by a court and cannot pay the appropriate fee, ISP has agreed to provide you with the record at no cost. With regard to your request for records related to the EPD officer, ISP has no responsive records because ISP declined to investigate that matter. Moreover, even if ISP did have records, Mr. Carnell argues they would be exempt from disclosure as investigatory records of a law enforcement agency pursuant to I.C. § 5-14-3-4(b)(1).

¹ Your complaint also contains numerous other allegations that I already addressed in a previous advisory opinion, *Op. of the Public Access Counselor 10-FC-245*. I decline to entertain the same allegations again here.

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.” I.C. § 5-14-3-1. The ISP does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the ISP’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).

Regarding your request for criminal history information, Indiana law provides that limited criminal history information may not be released except under specific circumstances. I.C. § 10-13-3-27. “Limited criminal history” is defined as information with respect to any arrest or criminal charge, which must include a disposition.” I.C. § 10-13-3-11. Limited criminal history is subject-specific; in other words, a limited criminal history relates to a particular person about whom the information pertains. *See generally* I.C. § 10-13-3. I.C. § 10-13-3-30 authorizes the ISP to require that your request be submitted via ISP’s required form for requests for limited criminal histories. Moreover, that section authorizes the ISP to charge the fees as described on Form 8053. I trust that the ISP will respond appropriately to your request upon receipt of a completed Form 8053 and the required fees.

If the ISP has no records regarding the EPD officer, the ISP did not violate the APRA by denying that portion of your request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61; see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Lt. Mark Carnell