



STATE OF INDIANA

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April 7, 2010

Mr. Wayne A. Campbell
DOC # 113575
4490 W. Reformatory Road
Pendleton, IN 46064

*Re: Formal Complaint 10-FC-64; Alleged Violation of the Access to
Public Records Act by the Indiana State Police*

Dear Mr. Campbell:

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 § 5-14-3-1 *et seq.* I have enclosed the ISP's response.

BACKGROUND

According to your complaint, on February 18, 2010, you sent via certified mail a request to the ISP for a copy of a crime scene videotape. As of March 4, 2010, you had not received a response to your request.

My office forwarded a copy of your complaint to the ISP. In response, Laboratory Manager F. Joseph Vetter of the ISP claims that ISP received your request on February 22, 2010, and that he responded to your request the next day on February 23rd. Mr. Vetter further claims that the videotape that you requested is an investigatory record that is exempt from disclosure under Ind. Code § 5-14-3-4(b)(1).

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).

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 twenty-four (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. Here, it appears that the ISP responded to your written, mailed request the day after the ISP received it. Accordingly, the ISP's response was timely.

The ISP did not produce the videotape that you requested on the basis that it is an investigatory record. 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.* Based on these standards, it is my opinion that ISP did not violate the APRA by withholding the videotape.

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: F. Joseph Vetter