



STATE OF INDIANA

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August 8, 2011

Ms. April McClain
2545 Black Antler Circle
Indianapolis, Indiana 46217

Re: Formal Complaint 11-FC-182; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Ms. McClain:

This advisory opinion is in response to your formal complaint alleging the Fort Wayne Police Department ("Police Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Christine Darrah, Keeper of Records for the Police Department, responded to your complaint. Her response is enclosed for your reference. I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege that you submitted a request for a copy of the police report for your brother, Demetrius Royal, in regards to an arrest made on April 26, 2008. The Police Department provided the location, date, and time of the arrest, the responding officers, the parties arrested, and the date of birth of those arrested. All other records in response to your request were denied, citing the investigatory records exception for law enforcement agencies. *See* I.C. § 5-14-3-4(b)(1).

My office forwarded a copy of your complaint to the Police Department. In response, Ms. Darrah provided that with the exception to the records that were provided, any other records were exempt from disclosure pursuant to the investigatory records exception of a law enforcement agency.

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 Police Department 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 Police

Department'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).

The APRA requires that certain law enforcement records be made available for inspection and copying. I.C. § 5-14-3-5. Specifically, the APRA obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. The following information must be maintained in the daily log:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

I.C. § 5-14-3-5(c). You requested a copy of the police report for your brother in regards to an April 26, 2008 arrest. "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)." *See Opinion of the Public Access Counselor 09-FC-157*. It would appear from the Police Department's response to your request an attempt was made to comply with the requirements of I.C. § 5-14-3-5(c). The response indicated that two individuals were arrested, as such it would logically follow that an alleged crime or infraction occurred and the requirements of subsection 5(b)(3) would be applicable. The Police Department provided the time, date, and location of the occurrence; the responding officers, the parties that were arrested, and the date of birth of those parties arrested, but failed to include the name and age of any victim, unless the victim was a victim under IC 35-42-4, the factual circumstances surrounding the incident, or a general description of any injuries, property, or weapons involved.

The nature of what kind of information constitutes the "factual circumstances surrounding the incident" is unclear because the APRA does not define the term. *See generally* I.C. § 5-14-3-2. A 2004 informal opinion from Counselor Davis provides some guidance:

As you characterize it, the log is deficient because it often has only one-word responses to the elements included in IC 5-14-3-5(c)(3)(C) and (D). You state that for example, the log may simply say “burglary” where you believe the law would require a fuller explanation of the factual circumstances and a description of the injuries, property, or weapons involved. Further, you suggest that this part of the log should approximate what an investigating officer would tell his chief or a prosecutor in summarizing an incident. IC 5-14-3-5 does not contain any specific standard regarding how extensive the “factual circumstances” and “general description” must be. However, I agree that a one word description such as “burglary” for the factual circumstances surrounding the alleged crime or infraction is not sufficient. Rather, a reasonable interpretation of the requirement to create and disclose a log would contemplate that the description in (C) and (D) would serve to inform a person of the circumstances that led to the police being summoned to investigate, a brief summary of what they found at the scene, and a further indication of the items in (D). To illustrate, the log entry currently showing “burglary” might be illuminated in the following way: “police were summoned on report of sounds of breaking glass; when officer arrived, he saw signs of forcible entry in residence; numerous items inside the house missing and homeowner injured in altercation with suspect.”

Informal Inquiry Re: Law Enforcement Records and the Access to Public Records Act at 2 (November 23, 2004), available at http://www.in.gov/pac/informal/files/Hoosier_State_Press_memo.pdf.

Accordingly, the Police Department’s response to you pursuant to I.C. § 5-14-3-5(c) should have included the name and age of any victim, unless the victim was a victim of a crime under I.C. § 35-42-4; the factual circumstances surrounding the incident; and a general description of any injuries, property, or weapons involved.

Beyond the requirements of I.C. § 5-14-3-5(c), the investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. *See* I.C. § 5-14-3-4. An investigatory record is “information compiled in the course of the investigation of a crime.” *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, 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*.

Based on these standards, it is my opinion that the Police Department did not violate the APRA by citing the Investigatory records exception in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Police Department violated the APRA by failing to comply with the requirements of I.C. § 5-14-3-5(c). Beyond the requirements of I.C. § 5-14-3-5(c), the Police Department did not violate the APRA by denying your request for records by citing the Investigatory records exception provided in I.C. § 5-14-3-4(b)(1).

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Christine Darrah, Fort Wayne Police Department