



# STATE OF INDIANA

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September 19, 2011

Mr. Samuel L. Hampton  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 11-FC-216; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Hampton:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the Department. Her response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you submitted a request in writing to the Department on July 30, 2011 for a copy of Brian Blevins' criminal history. On August 9, 2011, the Department responded in writing to your request and advised that pursuant to I.C. § 5-14-3-4(a)(1), it was prohibited from disclosing the criminal history as the record was made confidential by state law. The Department advised that if you could demonstrate compliance with I.C. § 10-13-3-27, then the record would be released. Notwithstanding I.C. § 10-13-3-27, you believe that pursuant to I.C. § 5-14-3-5(c), you were entitled to a copy of the records.

In response to your formal complaint, the Department advised that I.C. § 10-13-3-27 provides a specific listing of individuals and organizations that a limited criminal history may be released to or made available for inspection. The Department, as a law enforcement agency, is charged with strict compliance with the statute. The Department further advised that you failed to demonstrate whether the subject of the request, identified only generally by name and estimated age, was subject to any of the criteria of I.C. § 10-13-3-27(a)(1)-(14) and whether you would qualify as a noncriminal justice organization entitled to receive a limited criminal history under I.C. 10-13-3-27(a) or (b). Had the Department complied with your request, you might have possibly subjected

yourself to criminal prosecution under I.C. § 10-13-3-27(c), which provides that any person who knowingly or intentionally uses the limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

The Department further provided that even if you have demonstrated that you met the criteria established under the I.C. § 10-13-3-27(c), your request lacked reasonable particularity as required by I.C. 5-14-3-3(a)(1). In regards to the subject of the request, you only provided the alleged first and last name, along with an estimated age. No further identifiers were provided, such as date of birth, social security number, gallery number, address, or any prior case numbers. In regards to I.C. 5-14-3-5(c), the Department advised that although the APRA requires the Department to keep a specified daily log, there is no requirement that a criminal history of prior convictions be maintained in response to a public records request.

### 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.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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, the Department responded to your request within the seven-day time period required by the APRA.

The APRA states that a public agency may not disclose records that are declared confidential by state statute.” *See* I.C. § 5-14-3-4(a)(1). Indiana law provides that limited criminal history information may not be released except under specific circumstances. *See* 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.” *See* 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. Indiana Code § 10-13-3-31 provides:

Release of data to subject person; fee; challenge of data authorized Sec. 31. (a) Unless otherwise prohibited by law, a criminal justice agency that maintains criminal history data, upon request and proper identification of the person about whom criminal history data is maintained, shall provide that person with a copy of the person's criminal history data for a reasonable fee. (b) Any person may challenge the information contained in the person's criminal history data file.

If you can demonstrate to the Department that your request meets the criteria of the statute, the Department should provide access to the record. Here, your request failed to establish any of the criteria, as you only provided the alleged first and last name and approximate age of the person whose criminal history you sought. As such, the Department did not violate the APRA in denying your request.

The APRA requires that a records request “identify with reasonable particularity the record being requested.” *See* I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. Even if you had met the criteria of I.C. § 10-13-3, the Department would not have acted contrary to the APRA in denying your request due to the request was vague and lacked specificity. Your request only provided for a criminal history of “Mr. Bryan Blevins, Male, White, age about 24 or 25, resided there in Marion County.” The Department has provided to you in its response to your formal complaint the additional information required to process any future requests.

Lastly, the APRA requires that certain law enforcement records be made available for inspection and copying. *See* 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.

Here, you specifically requested the “criminal history of Bryan Blevins.” As such, I.C. § 10-13-3 would provide the applicable statutory guidelines for the Department to respond to your request, as opposed to I.C. § 5-14-3-5. I.C. § 5-14-3-5 does not require a law enforcement agency provide a criminal history of an individual in response to a public records request.

#### CONCLUSION

For the foregoing reasons, it is my opinion that Department did not violate the APRA by denying you access to the criminal history because you have not yet shown that you are entitled to access under Ind. Code § 10-13-3 and further, your request failed to identify with reasonable particularity the person whose criminal history was sought.

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: Andrea Brandes Newsom