



STATE OF INDIANA

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November 28, 2011

Jana Lee Marjenhoff
16 Greer Road
Sandia Park, New Mexico 87047

Re: Formal Complaint 11-FC-279; Alleged Violation of the Access to Public Records Act by the Bedford Police Department

Dear Ms. Marjenhoff:

This advisory opinion is in response to your formal complaint alleging the Bedford Police Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* James Pittman, Attorney, responded to your request on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have submitted your first written records request to the Department on June 25, 2011. You requested “all property log sheets into the property unit, and all itemized property seized from Bruce Marjenhoff and family.” You indicated the property was impounded on or about April 3, 2000. You further requested a list of what property was still being held by the Department. On July 7, 2011, Mr. Pittman responded on behalf of the Department and provided that the records requested were considered to be investigative records of a law enforcement agency; as such the Department was exercising its discretion provided pursuant to I.C. § 5-14-3-4(b)(1) to deny your request. Mr. Pittman advised all property that had been seized was forwarded to the Federal Bureau of Investigations (“FBI”).

On July 10, 2011, you submitted a response to the Department after receiving Mr. Pittman’s response. You disputed the Department’s reliance on I.C. § 5-14-3-4(b)(1) in denying your request. You indicated that the FBI had advised you that all property removed was in the Department’s possession and that there was no longer an active investigation in regard to the property that was taken.

On October 12, 2011, you made an identical request of the Department, as had previously been submitted on June 25, 2011. On October 19, 2011, Mr. Pittman again

responded in similar fashion and provided that your request was denied pursuant to I.C. § 5-14-3-4(b)(1).

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. Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *See* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C); I.C. § 4-21.5-3-2(e); *Opinion of the Public Access Counselor* 04-FC-26. Here the Department responded to your requests within the timelines provided by the APRA.

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.” *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. “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.* As such, to the extent that the records you requested were investigatory records of a law enforcement agency, the Department did not violate the APRA by exercising its discretion and denying your request pursuant to I.C. § 5-14-3-4(b)(1).

CONCLUSION

Based on the foregoing, it is my opinion that the Department did not act contrary to the APRA.

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 distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: James Pittman