



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 20, 2012

Randall S. Tison
DOC 127788
Westville Correctional facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-158; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Sheriff's Department

Dear Mr. Tison:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sgt. Noah Robinson responded in writing to your complaint. A copy of his response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on May 24, 2012, you submitted a written request to the Department for audio tapes related to Case No. 01-33-624. The Department denied your request in writing, which you received on June 4, 2012. In its denial, the Department cited I.C. § 5-14-3-4(b)(1), as the audio tapes were considered to be an investigatory record on a law enforcement agency.

In response to your formal complaint, the Department advised that the audio tapes were considered an investigatory record of a law enforcement agency, as defined by I.C. § 5-14-3-2(h). The Department denied your request pursuant to I.C. § 5-14-3-4(b)(1) and in accordance with the Department internal policy regarding the release of investigatory records.

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 Police 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 twenty-four 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 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 written request pursuant to the requirements of section 9 of the APRA.

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. *Id.* 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).

Counselor Neal issued an advisory opinion regarding a law enforcement agency's requirements pursuant to I.C. § 5-14-3-5(c):

In some instances, a law enforcement agency will not maintain a separate record titled "daily log" but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log information, the agency will generally provide

copies of incident reports. In some cases, the agency will redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying. *Opinion of the Public Access Counselor 09-FC-93.*

Beyond the requirements of section 5 of 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.* Here the Department has provided that the audio tapes that you requested related to Case 01-33-264 where compiled during the investigation of a crime in late 2001 and early 2002. As such, it is my opinion that 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

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

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Sgt. Noah Robinson