



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

August 1, 2012

Beverly Perkins
2546 Bow Ct. Bldg. # 13
South Bend, Indiana 46628

Re: Formal Complaint 12-FC-178; Alleged Violation of the Access to Public Records Act by the St. Joseph County Superior Court

Dear Ms. Perkins:

This advisory opinion is in response to your formal complaint alleging the St. Joseph Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your formal complaint, you allege on June 20, 2012 you made an oral request of the Court for a copy of a certain probable cause affidavit. You further allege that you were denied access to the record by the Court. Your complaint is identical to the formal complaint filed by Fabian White in 12-FC-125 in May 2012. *See Opinion of the Public Access Counselor 12-FC-125.*

In response to Mr. White's formal complaint in 12-FC-125, Judge Frese advised that the Probable Cause Affidavit that was sought was an investigatory record of a law enforcement agency. As such, pursuant to I.C. § 5-14-3-4(b)(1), the Court exercised its discretion pursuant to the statute and denied your request. In denying your request, the Court was aware of the requirements of I.C. § 5-14-3-5 in regards to incidents where a person is arrested or summoned for an offense. As applicable here, the requirements of section 5 would not apply as the alleged Probable Cause Affidavit or the Search Warrant itself, are not related to any charges of which Mr. White's previous arrest, summons, or present custody is based upon. Further, Judge Frese noted the distinction between the Probable Cause Affidavit and the actual Search Warrant. A copy of the Search Warrant is left at the location of the search, to which it cannot be claimed would fall under the exception provided in (b)(1). However, the Probable Cause Affidavit, which is the record that has been sought, contains specific information that could reasonable result in the identification of a person whose safety could be compromised by providing access to the Probable Cause Affidavit and such identification could result in harm to the individual person.

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 Court 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 Court’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.

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).

Beyond the requirements of section 5 of the APRA, I.C. § 5-14-3-4(b)(1) provides that an investigatory records of law enforcement agencies are excepted from the

requirements of disclosure at the discretion of the public agency. 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. “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 applicable here, to the extent that your request sought records that are considered “investigatory records” pursuant to I.C. § 5-14-3-2(h), the Court could properly exercise its discretion under I.C. § 5-14-3-4(b)(1) to deny your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court 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: Judge Jerome Frese