



# 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

September 14, 2012

Mr. Jason M. Rodriguez  
517 E. Broadway  
Logansport, Indiana 46947

*Re: Formal Complaint 12-FC-216; Alleged Violation of the Access to Public Records Act by the Logansport Police Department*

Dear Mr. Rodriguez:

This advisory opinion is in response to your formal complaint alleging the Logansport Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Michael L. Clark, Chief of Police, responded on behalf of the Department. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that the Department has failed to comply with the requirements of I.C. § 5-14-3-5 in providing a daily log of suspected crimes, alleged crimes, and incidents investigated by the Department. With your formal complaint you have provided a copy of a recent daily log, where you allege that improper locations were provided, narratives missing, and other factually incorrect information. You provide that the Department will not process any requests unless they are made in writing and you have had incidents where a request was initially denied by the Chief, but the records were then subsequently provided without explanation. Further, you express concern of the daily reports only being made available to the media on Monday through Friday from 8:30 a.m. – 4 p.m. Your concern is that a serious matter involving the Department that occurs after 4 p.m. on Thursday would not be reported on until the following Tuesday's paper. Delaying the release of information, in some cases up to 72 hours after the incident has occurred, does not keep the public properly informed.

In response to your formal complaint, Chief Clark advised that the daily log documentation that you submitted with your formal complaint was only one of twenty-five pages of information that was provided to you. You sought information on certain cases contained in the August 7, 2012 packet, which was provided on August 8, 2012. The Department indicated in its response that if there was further information that was sought, to let them know. Regardless, Chief Clark provided that the Department clearly intended to provide all information that was required under the law. August 7, 2012 was

the first time the information was offered in this format, and when the *Pharos-Tribune* requested more information, it was provided.

As to the issue of access to police log information over the weekend, the Department policy is to make the records available during the regular business hours. While the Department is on patrol at all hours, it does not conduct regular business over the weekend. If serious incidents do occur that might jeopardize public safety, the Department would not hesitate to release information to the media or members of the public to advise them of such incidents and to take necessary precautions.

## 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).

The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. In this regard, information must be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. *Id.* I.C. § 5-14-3-5(a) provides that if a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person’s name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
  - (A) time and location of the arrest or the issuance of the summons;
  - (B) investigating or arresting officer (other than an undercover officer or agency); and
  - (C) investigating or arresting law enforcement agency.

If a person is received in a jail or lock-up, I.C. § 5-14-3-5(b) provides that the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person’s name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person



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is being held.

- (3) The time and date that the person was received and time and date of the person's discharge or transfer.
- (4) The amount of the person's bail or bond, if it has been fixed.

Finally, I.C. § 5-14-3-5(c) 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 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 or IC 35-42-3.5;
  - (C) the factual circumstances surrounding the incident; and
  - (D) a general description of any injuries, property, or weapons involved.

Counselor Neal provided the following guidance 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.*

As applicable here, the Department is law enforcement agency that is required to comply with the requirements of I.C. § 5-14-3-5. With your formal complaint, you provide a copy of a recent daily log provided by the Department. Although I am not able to discern whether the information provided by the Department in the log is factually accurate, however *if* this was the only information provided by the Department in response to your request to access the police log, it is my opinion that the Department failed to comply with the requirements of I.C. 5-14-3-5 (emphasis added). The Department has provided that the single page of daily log information that was submitted with your formal complaint was only one of twenty-fives pages of information that was produced. The information provided by the Department in its August 8, 2012 response does provide narrative and other requisite information as required by the statute. The only issue that I would note after reviewing the Department's entire disclosure, would be that the information required to be provided under I.C. § 5-14-3-5 should be automatically provided, and the requestor should not have to make an additional request in order for the requirements of the police log to be fulfilled. Regardless, as noted *infra*, I believe the entities could address many of the issues provided in your formal complaint and the Department's response if they would agree to meet and discuss the concerns of both parties.

As to the issue of access to the police log, the I.C. § 5-14-3-5 requires the record containing the information must be must be created not later than twenty-four hours after the incident has been reported to the agency. *See* I.C. § 5-14-3-5(c)(3). Pursuant to section 3 of the APRA, information must be made available for inspection and copying during the regular business hours of the public agency. *See* I.C. § 5-14-3-3(a). The APRA does not define "regular business hours" or how the subsection would apply to a law enforcement, whose agencies are always operational. Addressing a related issue in 1998, Counselor O'Connor advised that there was no requirement that a public agency be open for any particular hours of the day or for any number of hours, but it is the responsibility of a public official and a public agency to ensure that there is adequate opportunity and time for persons who wish to inspect and copy public records to do so. *See Informal Opinion of the Public Access Counselor 98-INF-4*, <http://www.in.gov/pac/informal/files/op98-4.pdf>. Further, "The General Assembly clearly intended that this type of information be available within a day after the report of the incident." *Id.* Based on this reasoning, Counselor O'Connor opined that an agency only allowing access to its records one day each week, for one hour only, would be contrary to the spirit and letter of the APRA. *Id.*

Counselor Davis agreed with the reasoning provided by Counselor O'Connor in a 2004 Informal Opinion:

Whether a public agency may curtail the hours in which a person may inspect police records was the subject of a 1998 opinion of the public access counselor, in *PAC Opinion 98-4*. There, Anne O'Connor criticized the Town's practice of limiting disclosure of non-investigatory police records only on Thursdays at 8 p.m. Noting that this limited time frustrated the law's requirement that incident log information be created



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within 24 hours after the incident occurred, she advised that the Town (a part-time agency) allow some time at least every day. As stated in PAC Opinion 98-4, there must be an adequate opportunity and time for persons who wish to inspect and copy public records to do so. While it might be reasonable at most times for the press and the PIO officer to meet at 9:00 a.m., to the extent that a person requesting log information may not be able to ever meet at 9:00 a.m., the police department should attempt to accommodate the person at a different time, in my opinion. [http://www.in.gov/pac/informal/files/Hoosier\\_State\\_Press\\_Association\\_memo.pdf](http://www.in.gov/pac/informal/files/Hoosier_State_Press_Association_memo.pdf)

As applicable here, you allege that the Department does not allow access to the police log as required to be provided under I.C. § 5-14-3-5 beyond Monday through Friday, from 8:30 a.m. to 4 p.m. Your concern is that any serious matter or crime involving the Department that occurs after 4 p.m. on Thursday would not be reported on until the following Tuesday. As opposed to the opinions cited where information was only being provided on certain days and/or times, the Department is allowing access to the daily log throughout the normal work week. As such, it is my opinion that the Department is not in violation of the letter of the law in following such guidelines. However, in working with other media and law enforcement agencies on this issue, the entities typically reach an arrangement regarding access to the police log during weekends or holidays by the media. For example, a reporter might be emailed or faxed a copy of the log on each weekend day or the newspaper is instructed to contact a specific officer, should a situation arise where the newspaper desires to have access to the police log on a specific incident during the weekend or holidays. Although the law would not require such action, I would strongly encourage both entities to reach an agreement regarding access to the police log during weekends and holidays.

As to the issue of whether the Department may require that a request been in writing, a request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). However, an agency may require that a request be made in writing or on a form provided by the agency. *See* I.C. § 5-14-3-3(a)(2). As such, it is my opinion that the Department would not violate the APRA by requiring that all requests for records be made in writing. However, I would note that 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).

## CONCLUSION

Based on the foregoing, it is my opinion that the Department acted contrary to the APRA if it failed to provide a full and complete police log as required by I.C. § 5-14-3-5. Specifically, if the only information provided was the single log sheet that was submitted with your formal complaint, the Department would have not complied with the requirements of the law. As to all other issues, 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". 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: Chief Michael Clark