



STATE OF INDIANA

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February 6, 2012

Timothy J. Kopkey
DOC 153747
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 12-FC-22; Alleged Violation of the Access to Public Records Act by the Indiana State Police Department- Laboratory Division

Dear Mr. Kopkey:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police Department - Laboratory Division ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lt. Mark Carnell, Legal Counsel, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department on December 3, 2011 for the following:

- (1) Laboratory results of LAB Case No. 04L2790 for Controlled Substances, delivered to the Department by D.E. Walters on October 20, 2004 at 8:10 a.m.;
- (2) Laboratory results of LAB Case No. 04M159 for Controlled Substances delivered to the Department by Fred Rogers on August 2, 2004 at 1400.

As of January 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive a response from the Department.

In response to your formal complaint, Lt. Carnell advised that the Department received your request on December 7, 2011. The request was then forwarded to the Department's Legal Offices. However, the Legal Office has no record of receiving the request. As to the substance of your request, the Department would have denied your request as the records sought were investigatory records of a law enforcement agency. I.C. § 5-14-3-4(b)(1) permits law enforcement agencies discretion to withhold investigatory records, with the exception of certain information that must be provided

pursuant to I.C. § 5-14-3-5. The Certificates of Analysis that you request were completed by the Department Lab upon the investigating police agency's request for analysis for controlled substances. Unlawful possession of controlled substances is a crime pursuant to I.C. § 35-48-11. Lt. Carnell did note that should you serve the Department with a valid subpoena pursuant to your pending or soon to be filed Petition for Post Conviction Relief, the Department would provide the records without objection. However, as you have made your request pursuant to the APRA, the Department has denied your request 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. Here, the Department failed to respond to your written request upon its receipt. As such, it is my opinion that the Department acted contrary to the APRA by not complying with the guidelines of section 9 when it failed to respond to your written request.

As to the substance of your request, 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-



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3-4(b)(1)." *Id.* 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

For the foregoing reasons, it is my opinion that the Department acted contrary to Section 9 of the APRA by failing to respond to your written request. 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 that reads "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Lt. Mark Carnell