



STATE OF INDIANA

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October 10, 2013

Ms. Dawn J. Clapperton
C/o Mr. Steve Bray
1950 N. Meridian St.
Indianapolis, IN 46202

Re: Formal Complaint 13-FC-265; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Ms. Clapperton and Mr. Bray,

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department, ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Samantha DeWester, Esq., responded on behalf of IMPD. Her response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 10, 2013.

BACKGROUND

Your complaint alleges the Indianapolis Metropolitan Police Department violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You allege that on or about July 30, 2013, you made a request for records upon the IMPD for the personnel file of a disciplined officer. You claim you were refused access when the IMPD failed to produce the records in a reasonable time and failed to produce the entirety of the factual basis relating to the discipline.

IMPD timely responded to your request on July 30, 2013 and again on August 1, 2013 advising you that a search was being initiated by Ms. DeWester as to the existence of the records. You sent follow-up emails on August 8 and August 15, 2013 inquiring as to the status of your request. On August 16, 2013, your organization, WISH-TV, filed with this office a request for an informal opinion. After the August 27, 2013 release of certain records, WISH-TV withdrew the request for an informal opinion. On September 10, you resurrected your request for an opinion from this office in the form of a formal complaint.

You claim the records received by WISH-TV did not satisfy your request. Responding to your request, Ms. DeWester advised the Public Access Counselor that the IMPD had complied with the APRA by providing the records within a reasonable time and all records responsive to your request were released to you.

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 Ind. Code § 5-14-3-1. The Indianapolis Metropolitan Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

As to your specific request, you sought the personnel file relating to a disciplined officer. The APRA provides, in relevant part, that personnel files of public employees are to be released only at the discretion of the public agency unless the request is for information relating to the status of any formal charges against the employee; and the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged. See Ind. Code § 5-14-3-4(a)(8)(B) and (C). In its response to your formal complaint, IMPD alleges the totality of the Officer’s personnel file that is not discretionary has been released to you in a timely manner.

The APRA does not define with specificity the “reasonable time” standard in Ind. Code § 5-14-3-3(b). Therefore, the determination of that standard has been left to the discretion of the Public Access Counselor. It is my opinion it was the legislature’s intent that such a determination should be made on a case-by-case basis instead of a blanket edict setting a hard deadline for production of records. In the present case, as a media outlet, it is well-recognized by this Office, reporters investigating the story are on a hard deadline. A public agency cannot, under the APRA, be expected to prioritize its records request based on the status of the requestor. It is my opinion all requests should be handled in an expeditious manner. It is also recognized the media is reporting on matters of public interest and it is reasonable that a public agency extend the courtesy of prioritization to the media. Such an approach would not prejudice non-media individuals requesting records.

For a department the size of IMPD, it is often difficult to gather and produce records in a timeframe that satisfies the person or entity making the request. Consequently, it is reasonable a city the size of Indianapolis may take 30-60 days to produce requested records. However, the Public Access Counselor is not a finder of fact and cannot state with sufficient knowledge the records you sought were of a nature that would require a full thirty (30) days to produce. One caveat to the reasonable time standard is the communication extended to a requestor of records updating them on the status of the request. From the emails provided in the formal complaint, it appears the IMPD made reasonable efforts to keep you in the loop as to that status. If the records were readily available to the IMPD and could be gathered and redacted easily, it would not be beyond the bounds of basic reason to produce the records more quickly than thirty (30) days, but I cannot make that determination and find a violation in this case.

As to the personnel files released, again it is not the position of the Public Access Counselor to be a fact-finder. Nor is an agency required to create a detailed factual basis of personnel if none exists. The IMPD suggests the only factual basis of a disciplinary action is maintained in the documents provided to you. If the means of keeping personnel files are in the format provided, then the IMPD has complied with the APRA. If there are other records, then they would be expected to be produced. Furthermore, if written communication exists that is of a non-deliberative or non-speculative nature, then that documentation would also be subject to release.

Although the burden is on the public agency to prove the non-existence of a record, that is a matter for the courts. See Ind. Code § 5-14-3-4.4(f). In the absence of proof the records do indeed exist, I cannot determine a violation has occurred.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Indianapolis Metropolitan Police Department did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

cc: Samantha DeWester