



STATE OF INDIANA

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November 8, 2013

Mr. Orza Salone #944875
Indiana State Prison
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 13-FC-295; Alleged Violation of the Access to Public Records Act by Indiana State Police

Dear Mr. Salone,

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The ISP has responded to your complaint by way of Ms. Lt. Susan Dean. Her response is enclosed for your review. 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 October 10, 2013

BACKGROUND

Your complaint dated October 10, 2013, alleges the Indiana State Police violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

You allege that on or about September 19, 2013, you sent a Request for Access to Public Record to Lt. Susan Dean of the Indiana State Police requesting information related to the investigation of former Howard County Judge, Roy Alan Brubaker. The ISP responded by acknowledging the existence of an investigation, but the release of any investigatory records is at the discretion of ISP.

The ISP relies on the exception found at Ind. Code § 5-14-3-4(b)(1), which states investigatory records of law enforcement agencies may be withheld at the discretion of the agency.

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 Indiana State Police 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 ISP’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.

Ind. Code § 5-14-3-4(1) exempts from disclosure the investigatory records of law enforcement agencies. It also states; however, certain law enforcement records must be made available for inspection and copying as provided in section 5 of the APRA. Section 5 becomes applicable when an individual has been arrested or is in jail. Investigatory record means information compiled in the course of the investigation of a crime. See Ind. Code § 5-14-3-2(i).

ISP acknowledges an investigation in the conduct of Brubaker was conducted. It is reasonably well known that Judge Brubaker was arrested and sentenced in 1994 for several drug related charges. Therefore, the “exception to the exception” in Ind. Code § 5-14-3-5 is triggered. The information that must be released upon request is enumerated in that section as:

- (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 agent); and
 - (C) investigating or arresting law enforcement agency.
- (b) If a person is received in a jail or lock-up, 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 whose order the person is being held.

(3) The time and date that the person was received and the 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.

The release of any other investigatory records compiled *after* the initial arrest during the course of the investigation is at the discretion of the law enforcement agency. Likewise, for any other information that is not specifically referenced in Section 5.

If the ISP is the custodian of the information in Section 5, then it must be released to you. I am not a finder of fact; therefore, I cannot state with accuracy if the ISP maintains the arrest record information in Section 5. Any other investigatory record may be withheld. It has been held by Public Access Counselors in the past that even after the adjudication of the case, investigatory records do not have to be disclosed. I hereby adopt that position as well. Counselor Hoage's opinion in Op. of the Public Access Counselor 12-INF-127:

Moreover, the investigatory records exception does not apply only to records of ongoing or current investigations. The exception applies regardless of whether a crime was charged or whether a crime was even committed. Instead, the exception applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records.

CONCLUSION

For the foregoing reasons, if the ISP maintains records pursuant to the arrest of the individual for whom you are seeking information, then they are in violation of the Access to Public Records Act. Any other investigatory records other than the arrest information spelled out in Section 5 of the APRA compiled during the investigation may be withheld from disclosure.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Lt. Susan Dean