



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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February 25, 2013

Mr. Chad M. Farrell
DOC 128294
1946 West U.S. Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 13-FC-52; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Mr. Farrell:

This advisory opinion is in response to your formal complaint alleging the Fort Wayne Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Christine Darrah, Keeper of Records, responded on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on January 14, 2013 you submitted a written request for records to the Department for "all reports, including, but not limited to the investigation, incident report, and all other reports involving the death of my 18-year old nephew Chase Logan Farrell around February 27, 2012." You provide that the response given by the Department failed to comply with the APRA.

In response to your formal complaint, Mr. Darrah advised that you were provided with all information as required under section 5 of the APRA. The predominate portion of your request was denied pursuant to I.C. § 5-14-3-4(b)(1). All records required to be provided under section 5 were produced at no cost; the remaining investigatory records will be provided upon the payment of the respective fees.

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 (emphasis added). *See* I.C. § 5-14-3-9(b). 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. 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).

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 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.



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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.*

Pursuant to the requirements of section 5 of the APRA, the Department produced a dispatch report in response to your request. The report provides that a call was received by the Department on February 25, 2012 at 12:58:28 regarding a dead body. The call was received by Amy L. Burge. Officers Jon M. Williams, Scott A. Caudill, and William G. Lyons responded to the call to 1313 N. Morton Street, Fort Wayne, Indiana 46805.

Thereafter, additional officers arrived at the location and the identities of those officers are provided. The report identified the decedent as 19-year old Chase Logan Farrell. From the information before me, it does not appear that the incident initially involved an alleged crime; the Department responded to a call as a report of a dead body. This is further evidenced by your original request to the Department where you stated that you do not believe the decedent's death was caused by an accident. If the report did not involve an alleged crime, the requirements of I.C. § 5-14-3-5(c)(3) would not apply. Alternatively, even if the requirements of section 5(c)(3) would apply, the report provides the incident occurred on February 25, 2012 at 1313 Morton Street in Fort Wayne, Indiana. The victim was identified as 19-year old Chase Logan Farrell. At the time the report was created, within twenty four hours of the incident as required by law, the Department arrived on the scene to discover the body of the decedent. A general description of the injuries was provided as a dead body was found. If for example a gun, knife, or automobile was involved, that would have been required to be listed in the report. However, as the death was later determined to be the result of an accident, it does not appear that any such information is applicable here. Thus, it is my opinion that the Department complied with section 5 of the APRA.

Beyond the requirements of section 5 of the APRA, the investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. There is no dispute that the Department is considered to be a "law enforcement 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. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. From the Department's citation to the investigatory records exception, the Department at some point after the discovery of the body investigated the matter as a crime. From what you have provided, it was later determined that the death was the result of an accident. The Department would not be prohibited from denying your request pursuant to the investigatory records exception if ultimately no party was arrested or if it was determined that no crime was committed. Thus it is my opinion that the Department would not violate the APRA by denying your request pursuant to the investigatory records exceptions found under I.C. § 5-14-3-4(b)(1) if the records were compiled during the course of the investigation of a crime.



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CONCLUSION

For the foregoing reasons, it is my opinion that if the Department 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: Christine Darrah