



STATE OF INDIANA

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May 4, 2016

Ms. Carol Lynn Isaacs
1316 Boyer Street
Richmond, Indiana 47374

Re: Formal Complaint 16-FC-63; Alleged Violation of the Access to Public Records Act by the Wayne County Sheriff's Office

Dear Ms. Isaacs:

This advisory opinion is in response to your formal complaint alleging the Wayne County Sheriff's Office ("Office") and Sheriff Jeff Cappa violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Office has responded via Mr. Howard Williams, Esq. His 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 March 18, 2016.

BACKGROUND

Your complaint dated March 18, 2016, alleges the Wayne County Sheriff's Office improperly denied your records request.

Between March 15 and March 18, 2016, you requested to see mug shots held by the Office. You were told to speak to Sheriff Cappa, who inquired as to why you wanted to see the records. You contend a prisoner committed sexual assaults while incarcerated and wished to identify the individual. You were told you were not allowed to enter the facility.

On April 11, 2016 the Office responded. The Office contends no denial has taken place. Based on the conversations you had with police, it is believed you wished to enter the actual jail. However, the Office notes members of the public are not allowed to enter the jail nor are they allowed access to jail computers. The Office also notes that because you have alleged a crime has occurred, a criminal investigation has been ordered. The Office also states your request for mug shots lacks reasonable particularity.

DISCUSSION

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 Wayne County Sheriff’s Office 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 Office’s disclosable 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).

The factual circumstances surrounding this matter are a bit murky, however, as I understand your complaint, you are simply seeking access to mug shots for inmates in a given date range. You have additionally given some identifying information pertaining to the individuals in the the mug shots you are seeking.

The Sheriff has offered two (2) justifications of denial; however, it appears as if you did not give the Sheriff an adequate amount of time to respond before filing your complaint. Therefore, this Opinion is advisory in nature and a conclusion will not be determined.

The Sheriff raises the issue of reasonable particularity. Pursuant to Ind. Code § 5-14-3-3, a requestor of public records must identify a record sought with specificity. Given that you do not know the names of the individuals identified in the mug shots, you gave as much of a description as you could. I am not aware as to how many individuals are processed through the Wayne County Sheriff’s Department in a given three-month period, nor am I aware of how those mug shots are categorized and stored. The reasonable particularity consideration in the law is to prevent ‘fishing expeditions’ on the part of a requestor.

You have asked for material during a relatively short, finite time period and provided some additional details for clarification. It is not a ‘universal’ request in my opinion. It should not be too onerous a task for the Department to produce the records you seek for inspection.

Some Sheriff’s offices have a public access terminal in the public area of the facility where the public and media can conduct searches of inmates. Others, including Wayne County, have an online portal of which the public can search inmates. Others still have mug shot books of printed pictures for public inspection. In some way shape or form, it seems reasonable the Sheriff would have a collection of mug shots for you to inspect. While the Sheriff is correct you may not enter a secure area, surely arrangements could be made to at least educate you on the process of public inspection, if any.

Finally, the Sheriff’s Department alleges your public records requests prompted a criminal investigation and therefore the records responsive to your request have been deemed ‘investigatory records’ and therefore exempt from disclosure under Ind. Code § 5-14-3-4(b)(1). Investigatory records may be released at the discretion of law enforcement. I find this argument disingenuous. **I caution public agencies to even ask for the purpose of a request as Ind. Code § 5-14-3-3 states that no request may be denied because the person making the request refuses to state the purpose of the request.** But for you stating the purpose of the request, a criminal investigation would not have been commenced.

The invocation of a discretionary exemption requires the discretion not be exercised arbitrarily. See Ind. Code § 5-14-3-9(g)(2). Discretion should be exercised judiciously. In the case of investigatory records, discretion should only be exercised if the release of records would jeopardize an ongoing investigation or compromise public safety or an expectation of privacy. It is the Opinion of this Office that the public inspection of mug shots would not endanger the integrity of a criminal investigation.

Emphasis added.

It is my recommendation the Wayne County Sheriff's Department facilitate the inspection or copying of the records you seek.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Howard Williams, Esq.