



STATE OF INDIANA

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May 4, 2016

Mr. Joshua A. Sanders
135 Edgewood Drive
Toms Rivers, New Jersey 08755

Re: Formal Complaint 16-FC-65; Alleged Violation of the Access to Public Records Act by the Michigan City Police Department

Dear Mr. Sanders:

This advisory opinion is in response to your formal complaint alleging the Michigan City Police Department (“Department”) and Sergeant Chris Yagelski violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. The Department has responded via Sergeant Yagelski. 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 21, 2016.

BACKGROUND

Your complaint dated March 11, 2016, alleges the Michigan City Police Department violated the Access to Public Records Act by improperly denying your records request.

You requested the police report regarding an incident which happened in February. Your daughter was visiting her mother’s family and an incident occurred which led to the police being called. You are seeking records related to that call.

On March 3, 2016 you were told you could not get access to the police report. On March 31, 2016 the report was released to this Office and forwarded to you. You believe a body camera was used at the time and footage is missing from the records provided.

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 Michigan City Police Department (“Department”) and 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

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)*.

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 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.

Pursuant to Ind. Code § 5-14-3-5(c) a law enforcement agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (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.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

Anyone may request this information, regardless of whether they were involved in the incident. An incident report or other document may substitute for this daily log provided it contains all of the information listed above. It appears as if the Department eventually released the incident report after your formal complaint was filed.

As for the issue of alleged body camera footage, this Office has taken the position that body worn camera footage is an investigatory record and may be exempt from disclosure at the law enforcement agency discretion. *See Opinion of the Public Access Counselor 15-FC-158*. Please be mindful that House Enrolled Act 1019 will amend the Access to Public Records Act to include guidance on body camera footage beginning July 1, 2016.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Sgt. Chris Yagelski