



# STATE OF INDIANA

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Mr. Ron Wilkins  
Journal & Courier  
217 North Sixth Street  
Lafayette, Indiana 47901

*Re: Formal Complaint 16-FC-73; Alleged Violation of the Access to Public Records Act by the Lafayette Police Department*

This advisory opinion is in response to your formal complaint alleging the Lafayette Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Department has responded via Mr. Edward Chosnek, Esq. City Attorney. 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 24, 2016, alleges the Lafayette Police Department violated the Access to Public Records Act by improperly denying your records request.

You requested the police report regarding arrests which occurred on March 8, 2016. Your request was repeatedly denied by several officers at the Department. You then delivered your request to Attorney Chosnek. On March 9, 2016, the Department published a press release which fulfilled your request, 36 hours after the incident, which included a number of arrests.

On April 8, 2016 the Department responded. The Department states you were provided with both the police bulletin and press release on March 9, 2016 which fulfilled your request.

## 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 Lafayette Police Department ("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 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. A denial of disclosure by a public agency also occurs when the person making the request is physically present in the office of the agency (i.e. hand-delivery), makes the request by telephone, or requests enhanced access to a document and twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made.

The incident in question occurred on Tuesday, March 8, 2016 at 3:00 a.m. Your public records request was hand-delivered on Tuesday, March 8, 2016 at 4:00 p.m. By 11:00 a.m., on Wednesday, March 9, 2016 you received production of the information you were seeking. An acknowledgement can be accomplished by the actual production of the records which was done via press release less than 24 hours after your request was hand-delivered to the agency.

As for the information required to be disclosed, pursuant to Ind. Code § 5-14-3-5(c), a law enforcement agency shall maintain a daily log or record which 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.**

*Emphasis added.*

An incident report, press release or other document may substitute for this daily log provided it contains all of the information listed above. It appears, based on the emails provided, the Department took an extra twelve (12) hours to make it available for public inspection; however, it is unclear when the document was actually created. Although the statute does not state it explicitly, it can be implied the writers of the statute intended for the daily log (or its substitute) to be made available for inspection 24-hours after the incident. I would encourage the Department to be mindful of this consideration in the future. Based upon the timing of the incident in question, however, I am not sure the public's right to know has been compromised in this instance. It is my Opinion a violation of the Access to Public Records Act has not occurred.

Please do not hesitate to contact me with any questions.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Mr. Edward Chosnek, Esq.