

February 20, 2001

Mr. Leon Hollingsworth
#994173 C-446
P.O. Box 41
Michigan City, IN 46361

Re: *Advisory Opinion 01-FC-011*; Alleged Denial of Access to Public Records by the Allen County Sheriff's Department.

Dear Mr. Hollingsworth:

This is in response to your formal complaint, which was received on February 6, 2001. You have alleged that the Allen County Sheriff's Department ("Sheriff's Department") violated the Indiana Access to Public Records Act, ("APRA") Indiana Code chapter 5-14-3. Specifically, you requested limited criminal history information¹ for a particular individual and were denied access to it. Sheriff James A. Herman responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Sheriff's Department did not deny you access to limited criminal history information in violation of the APRA because you failed to provide a specific and valid reason for obtaining this information as required under Indiana Code section 5-2-5-5.

BACKGROUND

According to your complaint, in a letter dated January 15, 2001 you requested from the Sheriff's Department a copy of the limited criminal history information for an individual under the APRA. You received a response dated January 29, 2001 informing you that the Sheriff's Department would not provide the limited criminal history information to you because the record is "protected under the IC 5-14-3² from disclosure requirement." You believe that you are entitled to this information because it was provided to you during discovery in the litigation of a case, specifically, Cause Number 02D04-9710-CF-601. You then filed your formal complaint with this Office.

In response to your complaint, Sheriff Herman admitted that the Sheriff's Department's response was not complete. He stated that they should have more clearly informed you that the reason you were not provided a copy of a limited criminal history you sought is that you did not state valid reason for obtaining the information under Indiana Code section 5-2-5-5. Sheriff Herman continues to hold that the information you requested was properly denied to you and that it will not be released unless and until you comply with the requirements of Indiana Code section 5-2-5-5.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Sheriff's Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Sheriff's Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Generally, under the APRA, the purpose or reason for making a request is not a basis for denying a public records request.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

Indiana Code §5-14-3-3(a). [Emphasis added.] In the case of limited criminal history information, the General Assembly has placed limitations on the reasons for which a requestor may receive this information.

(O)n request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the **subject** of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has applied for a license and criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that his rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;
- (10) is being investigated for welfare fraud by an investigator of the division of family and

children or a county office of family and children;

(11) is being sought by the parent locator service of the child

support bureau of the division of family and children; or

(12) has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

* * *

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

Indiana Code §5-2-5-5. [Emphasis added.]

As you will note, the reasons for which limited criminal history information will be disclosed to a noncriminal justice organization or individual are very limited. The Sheriff's Department cannot release limited criminal history information about a person unless a valid reason has been indicated under Indiana Code section 5-2-5-5. Similarly, any person who requests limited criminal history information under Indiana Code section 5-2-5-5 may not use it for any reason other than those stated in this statute.

It is my opinion, therefore, that the Sheriff's Department did not deny you access to the limited criminal history information you requested in violation of the APRA. The Sheriff's Department should have, however, more specifically stated the basis of their denial as not merely "IC 5-14-3"³, but also referenced Indiana Code section 5-2-5-5 which requires a person to state his or her reason for seeking limited criminal history information about an individual.

CONCLUSION

It is my opinion that the Allen County Sheriff's Department did not deny you access to limited criminal history information in violation of the APRA because you failed to provide a specific and valid reason for obtaining this information as required under Indiana Code section 5-2-5-5.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: The Honorable James A. Herman

¹ You requested "arrest and conviction information,"

² The APRA.

³ The APRA.