

May 22, 2002

Mr. David A. Baird  
4020 Bledsoe Avenue #M8  
Bremerton, WA 98310

Re: *Advisory Opinion 02-FC-16*;  
Alleged Denial of Access to Public Records by the Fort Wayne Police Department.

Dear Mr. Baird:

This is in response to your formal complaint, which was received on May 8, 2002. You have alleged that the Fort Wayne Police Department ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department denied you access to information on homicide cases. Mr. Timothy Manges, Fort Wayne City Attorney, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that there is insufficient evidence to indicate that the Department violated the APRA with respect to the your public records request.

#### BACKGROUND

According to your complaint, on May 6, 2002 you contacted the Department by telephone and requested information about homicides that took place within the Department's jurisdiction in order to submit an investigative claim to another Indiana agency. You claim that you spoke to an unnamed detective with the Department who told you that you could not have information from these homicide files. After this alleged denial, you filed your formal complaint with this Office.

In his response, Mr. Manges states that the Department has no record of receiving a request for public records from you. Further, he was unable to identify any homicide detective from whom you may have requested these records. As such, the Department was unable to respond specifically to your request and as to whether or not your request, if made, is subject to any of the exceptions to disclosure set forth in the APRA. Mr. Manges also stated in his response that if you were to put your request in writing and direct it to his attention, he will ensure that you receive a response regarding any public records you may wish to obtain from the Department.<sup>1</sup>

#### 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." Ind. Code § 5-14-3-1. The 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 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).

A public agency is required to make a response to a request that has been made over the telephone within twenty-four (24) hours after it is received. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, you claim that the Department, through an unnamed detective, immediately denied your request of May 6th for information on homicide cases. Unfortunately, since you did not provide the name of the detective and the Department has no record of receiving your request, it is my opinion that I cannot reach a definitive conclusion as to whether or not the alleged denial was appropriate under the APRA.

Under the APRA, agencies may accept requests for public records that are verbal or written. In this case, you stated that you did speak to a detective with the Department, however, the Department was unable to determine who that person was and, consequently, indicate whether the denial was justified or not under the APRA. It is my suggestion that you accept Mr. Manges' offer to accept your request, in writing, for the public records you were seeking. In this way, there will be documentation of your request, and if necessary, you may contact this Office again if you have any concerns about the Department's response.

### CONCLUSION

It is my opinion that, due to the lack of sufficient evidence of your request to the Department, I cannot reach a definitive conclusion as to whether or not the alleged denial was appropriate under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Timothy Manges, City Attorney w/o enclosure

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<sup>1</sup> Mr. Manges' address is available on the letterhead of his response to your complaint, a copy of which is enclosed.