

March 3, 2003

Ms. Chastity E. Beck
6137 West French Drive
Terre Haute, IN 47802

Re: *Advisory Opinion 03-FC-8*; Alleged Denial of Access to Public Records by the West Terre Haute Police Department.

Dear Ms. Beck:

This is written in response to your formal complaint, which was received on February 25, 2003.

¹ You have alleged that the West Terre Haute Police Department ("Department") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that on February 8 and 14, 2003 you requested access to records of the Department and that you were denied access to them. Chief Ernie Meeks, on behalf of the Department, 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 the Department may not deny access to copies of its radio dispatch log as these are disclosable public records under the APRA. It is also my opinion that the Department may only charge the actual cost, which is defined at Indiana Code section 5-14-3-8(d), for copies of its radio dispatch log.

BACKGROUND

According to your complaint, you state that you were denied to copies of public records of the Department on February 8 and 14, 2003 ² and that Chief Meeks, Assistant Chief James Laughlin and Corporal Jerry Goodman were responsible for these denials. Specifically, you requested copies of reports of well-baby checks that were to be completed during the month of January, 2002 concerning your son. When you were allegedly denied access to these, you filed your formal complaint with this Office.

In his response, Chief Meeks stated that the only records concerning the baby well-checks on your child are those that are recorded in the radio dispatch log for the Department. When any person makes a request for a copy of this log, Captain Meeks indicates that they have always considered them to be disclosable public records and copies are provided for a three dollar (\$3) fee. Chief Meeks also stated that neither he nor the other two members of the Department mentioned in your complaint had received

a request from you for copies of these public records. In a telephone conversation with Chief Meeks yesterday, he advised me that the Department is providing you with over 100 pages of the radio dispatch log that contains the information you are seeking.

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). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. See, Ind. Code §§5-14-3-9(a) and (b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in 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).

According to your complaint, you made requests for copies of the reports filed by the Department's officers regarding well-baby checks and indicate that you were denied access to these reports. Chief Meeks states that the three members of the Department named in your complaint, however, did not receive any requests, verbal or otherwise, for copies of these public records. I suppose that you may have spoken to others at the Department concerning your requests, but your complaint does not indicate so. As such, it is difficult for me to make a clear determination as to whether or not you were denied access by the Department. I can state that if you did make a request for copies of the radio dispatch log entries, these records should have been disclosed to you. According to Chief Meeks, the Department is producing to you copies of the radio dispatch logs you requested and you may have already received them.

Another issue was raised by Chief Meeks' response and while it was not part of your complaint, it is important that I address it. Chief Meeks noted that, by local ordinance, the copying fee charged for copies of the radio dispatch log reports is \$3.00 per report. Under the APRA, a local public agency may only charge the actual cost of the copying unless there is a statute setting forth a different fee. Ind. Code §5-14-3-8(d). While law enforcement agencies may charge a minimum fee of \$3.00 per report for accident or crash reports, there is no statute that would permit such a fee for copies of other records of the Department, such as copies of the radio dispatch log or incident reports. See, Ind. Code §9-29-11-1. For this reason, the Department may not collect a fee that exceeds the actual cost standard set forth at Indiana Code section 5-14-3-8(d) for copies of the radio dispatch log and the fiscal body for the Department should revise its ordinance accordingly.

CONCLUSION

It is my opinion that the West Terre Haute Police Department may not deny access to copies of its radio dispatch log as these are disclosable public records under the APRA. In addition, under Indiana Code section 5-14-3-8(d) the Department may only charge the actual cost of copying for its radio dispatch logs and other public records for which a higher copying fee has been set by statute.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Chief Ernie Meeks, WTHPD w/o enclosure

¹ You requested priority status for your complaint under IC 5-14-5-10 and 62 IAC 1-1-3 and it is my opinion that this was appropriate under 62 IAC 1-1-3(3). This Opinion, therefore, is being issued within seven (7) days of the receipt of your complaint.

² Under Indiana Code section 5-14-5-7, a formal complaint must be filed within thirty (30) days of the alleged denial. You mentioned in your complaint violations that may have occurred prior to this time period, but this Opinion only covers the most recent denials.