

March 24, 2003

Mr. Greg Sobin  
#113650 DE-329  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-15*; Alleged Denial of Access to Public Records by the City of Lawrence Police Department.

Dear Mr. Sobin:

This is in response to your formal complaint, which was received on March 17, 2003. You have alleged that the City of Lawrence Police Department ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that the Department failed to produce to you records related to a particular individual, presumably under Indiana Code section 5-14-3-5. Mr. David Rees, Attorney for the Department, responded to your complaint by telephone. For the reasons set forth below, it is my opinion that the Department denied you access to public records in violation of the APRA and that this denial is actionable in court under the Act.

## BACKGROUND

According to your complaint, in a request <sup>1</sup> dated March 10, 2003, you asked for copies of any and all complaints from or against a Tessa N. Capps, including a date of birth for this person, from the Department. In an undated letter from the Department's Records section, you were advised that the Department contacted the Indiana State Police about your request and they advised you that you would have to provide a subpoena in order to obtain the requested public records. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Rees stated that when the Department received your request, the Records Department staff contacted the Indiana State Police for advice on how to respond. It appears that your request was interpreted as a request for investigatory records of the Department, with no consideration for the information that is required to be disclosed by law enforcement agencies under Indiana Code section 5-14-3-5. Mr. Rees advised me that the Department has located only one report

that satisfies your request and that he will contact you directly to provide that information to you.

## 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. 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 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 lies with the public agency to show that a public record is not disclosable, and if access is denied to put into writing the statutory basis for that denial. See, Ind. Code §5-14-3-1 and 5-14-3-9(c). Under Indiana Code section 5-14-3-9(d), a person who has been denied access to a public record may file an action in circuit or superior court to compel the public agency to permit inspection or copying of the public record.

Under the APRA, law enforcement agencies have discretion over the disclosure of investigatory records, which are defined as "information compiled in the course of the investigation of a crime." See, Ind. Code §§5-14-3-2 and 5-14-3-4(b)(1). Law enforcement agencies must produce upon request, however, certain information on arrests, persons being held in jail and a department's responses to complaints, accidents or requests for assistance. Ind. Code §5-14-3-5. The APRA provides that a law enforcement agency may not respond that information listed under Indiana Code section 5-14-3-5 is an investigatory record that is disclosable at the discretion of the agency under Indiana Code section 5-14-3-4(b)(1).

According to your complaint, you requested from the Department copies of any complaints by or against Tessa N. Capps and you provided a birthdate for Ms. Capps. The Department responded in a manner that indicates that they have information but that it is investigatory in nature and could only be disclosed with a subpoena. According to Mr. Rees, the Department did in fact have information and that they failed to produce to you the information that is required to be disclosed to you under Indiana Code section 5-14-3-5. It is my opinion, therefore, that the Department's denial of access to public records in response to your request was not appropriate under the APRA. Further, the Department should have included the statutory basis for any denial, which was not done in response to your request. While this does not change my opinion on this matter, it appears that Mr. Rees will provide to you in the near future the information that should have been disclosed to you by the Department under Indiana Code section 5-14-3-5.

## CONCLUSION

It is my opinion that the City of Lawrence Police Department denied you access to public records in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. David Rees, Attorney

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<sup>1</sup> Mr. Rees did not provide a written response to your complaint, but did provide me with a copy of your request to the Department.

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