

July 2, 2003

Robert G. Beatty
#884923 33-1J
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-45*: Alleged Denial of Access to Public Records by the Indiana State Police Department.

Dear Mr. Beatty:

This is in response to your formal complaint, which was received on June 10, 2003. You have alleged that the Indiana State 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 public records in response to your May 3rd request for access to public records. Major Anthony Sommer, Attorney for the Department, responded in writing to your complaint. A copy of his response and the attachments are enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not deny you access to public records under the APRA with respect to your May 3rd request.

BACKGROUND

According to your complaint, you made a request to the Department for laboratory analysis reports related to your October 27, 1980 arrest on S.R. 6 in Nappanee, Indiana. Specifically, you asked for all laboratory examination results and tests completed on all the controlled substances related to your arrest. The Department did respond to your request in a letter dated May 9, 2003 advising you that they did not have any public records responsive to your request, as the Department was not the arresting agency. Major Sommer further stated that to the extent that the Department has laboratory records related to your arrest, the Department would exercise its discretion to withhold these under Indiana Code section 5-14-3-4(b)(1), the exception for investigatory records of a law enforcement agency. You filed a formal complaint with this Office because you believe that the Department is required to provide you with more information about the nature of these investigatory records, such as where are these records, who sent them to the Department and what items were from your arrest.

In his response, Major Sommer stated that he did respond to your May 3rd request in a timely manner and advised you that the Department could not locate any records related to the laboratory analysis of alleged contraband taken from you at the time of your 1980 arrest. Major Sommer also advised you that even if the Department had any such records, those records would be disclosable at their discretion under Indiana Code section 5-14-3-4(b)(1). The Department determined after responding to your May 3rd complaint that they did have investigatory records related to your arrest, but Major Sommer maintains that the Department is exercising its discretion not to release to them to you. Apparently, the Nappanee Police Department did submit six (6) items to the Department for examination, but Major Sommer stated that the Department is not obligated to identify these items to you under Indiana Code section 5-14-3-4(b)(1). It is the Department's position that they are not required to identify these investigatory records.

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).

In your complaint, you claim that the Department violated the APRA by failing to identify the investigatory records in their possession. The Department responded that under Indiana Code section 5-14-3-4(b)(1) they are not required to provide specific descriptions of investigatory records, only to inform you that they do have investigatory records that will not be released under Indiana Code section 5-14-3-4(b)(1).

Indiana Code section 5-14-3-4(b)(1) states that a law enforcement agency has discretion over the disclosure of investigatory records. "Investigatory records" are defined as "information compiled in the course of investigating a crime." Ind. Code §5-14-3-2. The laboratory records you requested do appear to fall within the definition of "investigatory records." Under the APRA, a public agency must respond to public records requests and, if denying access to any public records, cite to the statutory authority for that denial. Ind. Code §5-14-3-9(c). The APRA does not state that a public agency must identify with particularity the records being withheld in response to your request. For this reason, it is my opinion that the Department did not deny you access in violation of the APRA by failing to identify with particularity any investigatory records withheld from you in accordance with Indiana Code section 5-14-3-4(b)(1).

CONCLUSION

It is my opinion that the Indiana State Police Department did not deny you access to public

records in violation of the APRA by failing to provide more specific information to you about investigatory records withheld from you under Indiana Code section 5-14-3-4(b)(1).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Major Anthony Sommer, ISP

¹ The only reference to identifying the content of a record withheld under Indiana Code section 5-14-3-4 (b) is at Indiana Code section 5-14-3-9(f), which requires the public agency to establish the content of the records with adequate specificity in a civil action filed under the APRA. There is no similar reference in the APRA requiring the public agency to do so merely in responding to a public records request.