



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 15, 2011

Mr. Gregg H. Morelock
City of Greenfield
6 West South Street
P.O. Box 6
Greenfield, IN 46140

Re: Informal Inquiry 11-INF-33; Law Enforcement Records

Dear Mr. Morelock:

This is in response to your informal inquiry regarding the Greenfield City Police Department ("Department"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* and other relevant statutes.

In your inquiry, you seek an opinion regarding the extent of disclosure of information relating to the circumstances of an arrest. *See* I.C. § 5-14-3-5. You note that Ind. Code § 5-14-3-5 outlines specific arrest information that must be disclosed. You inquire as to whether any additional information is to be included in such a disclosure. You also seek advice as to whether such arrest information, in response to a records request, can be produced once, in written form, or whether disclosure is required in all forms in which the information is maintained (i.e. police video, daily log, incident report).

The simple answer to your question regarding how to handle requests for information that must be released under section 5 when such information is included in a police log or incident report is that section 5 information must be released, but any additional information may be redacted prior to disclosure if it qualifies as an investigatory record. As you know, the investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is "information compiled in the course of the investigation of a crime." I.C. § 5-14-3-2(h). The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. "Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1)." *Id.*

In some law enforcement agencies, a daily log of suspected crimes, incidents, or complaints is not maintained as a separate record. Regarding a daily log, the APRA requires the following:

An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

I.C. § 5-14-3-5(c). Thus, if an agency does not maintain a separate daily log, the agency must produce some record that contains the information required by Ind. Code § 5-14-3-5 to be disclosed. In some jurisdictions, the law enforcement agency will provide a copy of a police report or incident report if the agency does not maintain a daily log. The agency is only required to provide the information listed in I.C. § 5-14-3-5, though, and as such may redact the remainder of the information contained on the report if it was indeed compiled during the course of the investigation of a crime or is nondisclosable pursuant to another exception.

The APRA does not contain any specific standard regarding how extensive the “information relating to the circumstances of the arrest or the issuance of a summons” must be, nor does it define “circumstances of the arrest.” I typically advise agencies that the type of information that is commonly read in a newspaper article regarding an arrest is the type of information that should be released, although I also remind agencies that they need not release investigatory information that would compromise an ongoing investigation or future prosecution. *See* I.C. § 5-14-3-4(b)(1). When determining what records to release in order to comply with Ind. Code § 5-14-3-5(a), agencies should ensure that all required information is released and, when in doubt, be mindful that the APRA is interpreted liberally in favor of disclosure. *See* I.C. § 5-14-3-1.

In your second inquiry, you seek advice as to the disclosure of records in multiple formats, if maintained by the public agency. “Under Indiana Code section 5-14-3-8(e), a public agency “must provide at least one (1) copy of” a public record to a person, but there is no requirement that a public agency provide multiple copies to the same person.” *Opinion of the Public Access Counselor 01-FC-07*. This is the case even if the agency maintains the records in multiple formats. If the request is made for an electronic copy, section 3(d) of the APRA requires public agencies to make reasonable efforts to provide a requester with access to electronically stored information. That section applies, however, only to that information that is otherwise disclosable under the APRA and not excepted from disclosure under either section 3 or 4. I.C. § 5-14-3-3(d). The burden is on the agency to separate the disclosable information and make it available for inspection and copying. I.C. § 5-14-3-6. If confidential information is contained within electronic records responsive to a request, the APRA provides that a public agency may charge a person direct cost of reprogramming a computer system. I.C. § 5-14-3-6(c).

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor