



STATE OF INDIANA

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May 30, 2012

Philip Gregory Yeary
DOC#: 169399
1946 W. U.S. 40
Greencastle, Indiana 46135

*Re: Informal Inquiry 12-INF-27; "Reasonable Particularity" and
"Investigatory Records"*

Dear Mr. Yeary:

This is in response to your informal inquiries regarding the requirement of reasonable particularity and the investigatory records exception under the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following informal opinion in response to your inquiries. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

BACKGROUND

You have submitted the following inquiries regarding "reasonable particularity" and the "investigatory records" exception under the APRA:

"My original request to the Rising Sun Police Department for records relating to three individuals, and states 'I would like to obtain copies of all records and files...including but not limited to...' Does that qualify as 'reasonable particularity (please see Ind. Code 5-14-3-3(a)(1))?' Can I make a legitimate request for all public records related to my case?"

"Do you consider the following records investigatory: search warrants (court record), affidavit, tow records, inventory records, property 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.” See I.C. § 5-14-3-1. Accordingly, any person has the right to inspect and copy a public agency’s records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

A request for records may be oral or written. See I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See I.C. §5-14-3-9(a). The APRA does not require public agencies to *produce* records within seven (7) days; rather, it requires a *response*. A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. The APRA would not prohibit the agency from sending a second acknowledgement or status update to the requestor, prior to the production of the records.

The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. Counselor Neal provided in 09-FC-24 the following regarding “reasonable particularity”:

“When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.mw.com, accessed July 18, 2007. There are no specific guidelines as to what constitutes reasonable particularity. Certainly a request cannot always be considered to be made without reasonable particularity solely because it covers a large number of records. As I general guideline, I advise agencies that when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity. *Opinion of the Public Access Counselor 09-FC-24*.

Because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88*. Here, if the agency cannot ascertain “all public records related to [your] case,” then the agency’s proper response to such a request would be to seek further clarification from you rather than simply denying the request.

The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. *See* I.C. § 5-14-3-4(b)(1). An investigatory record is “information *compiled* in the course of the investigation of a crime.” I.C. § 5-14-3-2(h) (emphasis added). Because the statutory language is clear that the exception does not only apply to those records *created* by law enforcement agencies, but also to those records *compiled* by law enforcement agencies during an investigation, it is my opinion that any records obtained by the Department during the investigation of a crime can be construed as “investigatory records” within the meaning of section 2(h). Moreover, the investigatory records exception does not apply only to records of ongoing or current investigations. The exception applies regardless of whether a crime was charged or whether a crime was even committed. Instead, the exception applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. Based on these standards, if the agency compiled any of the specific records that you have listed in the course of an investigation of a crime, it would be able exercise its discretion provided under I.C. § 5-14-3-4(b)(1) to deny the request.

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

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor