November 23, 2004 Guidance to Hoosier State Press Association Regarding Law Enforcement Records

November 23, 2004

Mr. Steven Key
Hoosier State Press Association
One Virginia Avenue
Suite 701
Indianapolis, IN 46204

Re: Informal Inquiry Response re: Law Enforcement Records and the Access to Public Records Act

Dear Mr. Key:

You have asked for an informal inquiry response from the Office of the Public Access Counselor via your memorandum dated May 4, 2004. Your questions involve a disagreement between Tim Harmon, the managing editor of the South Bend Tribune, and the South Bend Police Department regarding whether law enforcement records are disclosable under IC 5-14-3-5. Thomas L. Bodnar of the City of South Bend, Department of Law represents the South Bend Police Department. Mr. Bodnar submitted a June 11 letter at the invitation of the predecessor public access counselor. I have reviewed both submissions and the statutes at issue, and I issue this informal inquiry response under IC 5-14-4-10(5).

Your inquiry concerns the interplay between various confidentiality statutes regarding law enforcement records on the one hand, and the "mandatory disclosure" requirements of Ind.Code 5-14-3-5 of the Access to Public Records Act ("APRA") on the other. Your questions raise matters purely of statutory interpretation.

I believe that the law enforcement statutes and APRA can be harmonized to preserve the requirements under IC 5-14-3-5. To the extent that a law enforcement agency believes that the aims of the confidentiality provisions, especially with respect to juvenile records, are undermined by this interpretation, I suggest seeking redress in the legislature or a court.

IC 5-14-3-5 makes available for inspection and copying three types of records: 1) information concerning a person arrested or summoned for an offense; 2) information regarding a person who is received in a jail or lock-up; and 3) certain information that is required to be maintained in a daily incident log or record that lists suspected crimes, accidents, or complaints. With regard to the daily incident log, the following types of

information are required to be created within 24 hours of the incident and then 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 Indiana Code 35-42-4;
> > (C) the factual circumstances surrounding the incident; and
> > (D) a general description of any injuries, property, or weapons involved.

Prior to raising your specific questions concerning other law enforcement confidentiality provisions, you raised an issue concerning the amount of information being provided by the South Bend Police Department on its daily incident log. As you characterize it, the log is deficient because it often has only one-word responses to the elements included in IC 5-14-3-5(c)(3)(C) and (D). You state that for example, the log may simply say "burglary" where you believe the law would require a fuller explanation of the factual circumstances and a description of the injuries, property, or weapons involved. Further, you suggest that this part of the log should approximate what an investigating officer would tell his chief or a prosecutor in summarizing an incident.

IC 5-14-3-5 does not contain any specific standard regarding how extensive the "factual circumstances" and "general description" must be. However, I agree that a one-word description such as "burglary" for the factual circumstances surrounding the alleged crime or infraction is not sufficient. Rather, a reasonable interpretation of the requirement to create and disclose a log would contemplate that the description in (C) and (D) would serve to inform a person of the circumstances that led to the police being summoned to investigate, a brief summary of what they found at the scene, and a further indication of the items in (D). To illustrate, the log entry currently showing "burglary" might be illuminated in the following way: "police were summoned on report of sounds of breaking glass; when officer arrived, he saw signs of forcible entry in residence; numerous items inside the house missing and homeowner injured in altercation with suspect."

Obviously, it would be difficult to set out a specific standard with respect to the completeness of the log. However, I doubt that your suggested standard is the one required by the statute, where an officer's statement of the crime or infraction reported to a prosecutor or chief might include his or her impressions of who a likely suspect is or the incident's similarity to other incidents, as examples. Those impressions may well be part of the investigatory record that could be withheld under the exception for investigatory records at IC 5-14-3-4(b)(1).

You also questioned whether the South Bend police department could require that reporters meet with the police department's public information officer during only a one hour period each day if the reporter wanted additional information from the incident report in addition to the dispatch log. As you are aware, the APRA states that a person may inspect and copy public records during the "regular business hours" of the agency. Whether a public agency may curtail the hours in which a person may inspect police records was the subject of a 1998 opinion of the public access counselor, in *PAC Opinion 98-4*. There, Anne O'Connor criticized the Town's practice of limiting disclosure of non-investigatory police records only on Thursdays at 8 p.m. Noting that this limited time frustrated the law's requirement that incident log information be created within 24 hours after the incident occurred, she advised that the Town (a part-time agency) allow some time at least every day. As stated in PAC Opinion 98-4, there must be an adequate opportunity and time for persons who wish to inspect and copy public records to do so. While it might be reasonable at most times for the press and the PIO officer to meet at 9:00 a.m., to the extent that a person requesting log information may not be able to ever meet at 9:00 a.m., the police department should attempt to accommodate the person at a different time, in my opinion.

You and Mr. Bodnar submitted specific issues that are the subject of your dispute. In the remainder of this opinion, I have reviewed and analyzed the various law enforcement records statutes that are being questioned. I have organized the analysis and headed the sections of the letter by the specific statute.

Ind.Code 31-39-4

Chapter 4 relates to law enforcement records involving allegations that a child is a delinquent child or a child in need of services. IC 31-39-4-1. The law provides for disclosure of juvenile law enforcement records to certain persons or agencies in two ways: 1) either as a matter of right without the specific permission of the head of the law enforcement agency, or 2) in the agency head's or his designee's discretion.

Under IC 31-39-4-8, the head of a law enforcement agency or that person's designee <u>may</u> grant any person having a legitimate interest in the work of the agency or in a particular case access to the agency's confidential records. The statute requires that the agency head exercise discretion more liberally with respect to the identity of juveniles charged with the commission of any act that would be murder or a felony if committed by an adult, and the identity of a juvenile charged with the commission of an act that would be part of a pattern of less serious offenses. A person having access to records under section 8 is not bound by the confidentiality provisions of IC 31-39-3 and may disclose the records. The title of this section is "interested persons."

You believe that the South Bend Police Department has denied access to the media because it maintains that media are never "interested persons" under section 8. You believe that the media may be "interested persons" because the media may demonstrate a legitimate interest in the police department's work, and the statute contemplates that the person receiving access to otherwise confidential information is permitted to disclose it.

There is no guidance in the law regarding what a "legitimate interest in the work of the agency or a particular case" is. However, there is nothing in the statute **precluding** the media from being an "interested person," and to the extent that the agency deems that it is without discretion to release records to the media under this section, that interpretation is incorrect. Not only does the statute allow release to the public of the information by the interested person, a result which would be expected if disclosed to the media, but the statute also requires the head of the agency to consider that "the best interests of the safety and welfare of the community are generally served by the public's ability to obtain" information about the identity of juveniles charged with certain serious offenses or of recidivist behavior. Also, although one might have considered that researchers might have been the group intended to benefit from section 8, access to records for researchers is provided for in section 9. Although section 8 is not by its terms limited to media requests for information, nothing in section 8 precludes a law enforcement agency from disclosing to media the agency's law enforcement records, in its discretion.

I also note that under IC 31-39-3-2, the law enforcement agency is required to release specified limited information about certain juvenile records; the statute gives no discretion to limit disclosure of this limited information to media or other persons.

Juvenile History Data

The South Bend Police Department has taken the position that IC 10-13-4 restricts access to juvenile history data, some of which would appear in a daily incident log under IC 5-14-3-5. While not completely clear, it appears that the South Bend Police Department is arguing that juvenile history data can only be released in accordance with IC 10-13-4-12, and therefore may not be released under IC 5-14-3-5. For the following reasons, I do not agree that IC 10-13-4 is inconsistent with IC 5-14-3-5, and therefore there is no conflict between those provisions.

IC 10-13-4-4 defines "juvenile history data" to mean information collected by criminal or juvenile justice agencies or individuals about a child who is alleged to have committed a reportable act and consists of the following [in pertinent part]: (1) [d]escriptions and notations of events leading to the taking of the child into custody by a juvenile justice agency for a reportable act allegedly committed by the child.

There are other types of information that are considered to be part of juvenile history data such as dispositional decrees, but the additional data would not be part of an incident log or any other information under IC 5-14-3-5. A "reportable act" is defined as a delinquent act that would be a felony if committed by an adult. IC 10-13-4-8. The Indiana State Police Department ("Department") is the official state central repository of juvenile history data. IC 10-13-4-9; IC 10-13-1-2. Although the Department is the central repository of juvenile history data, any criminal or juvenile justice agency may provide or receive juvenile history data to or from another such agency. IC 10-13-4-11.

The South Bend Police Department is a "juvenile justice agency" as well as a "criminal justice agency." IC 10-13-4-5; IC 10-13-4-2; IC 10-13-3-6.

Interestingly, IC 10-13-4 does not explicitly declare that juvenile history data is confidential in the custody of a juvenile justice or criminal justice agency. However, IC 10-13-4-12 implies as much when it states that any juvenile justice or criminal justice agency that maintains juvenile history data shall provide it, with proper identification, to the person about whom the data is maintained or the person's parent or guardian. This section continues by restricting the State Police Department from releasing or allowing inspection of juvenile history data to any person or agency that is not authorized under chapter 4 to receive it. IC 10-13-4-12(c). This latter provision would only apply to disclosures by the State Police, not the South Bend Police Department.

The issue is whether the South Bend Police Department may restrict information that may be released to the media or any person from its daily incident log that is mandated to be released under IC 5-14-3-5(c). The daily incident log information that the South Bend Police Department believes would not be disclosable would presumably be limited to juvenile charges for a delinquent act that would be a felony if committed by an adult, since that is the only juvenile history data collected and maintained by the various agencies under IC 10-13-4.

I do not believe that IC 10-13-4 operates to restrict the information that must be maintained and disclosed under IC 5-14-3-5. First, juvenile history data is a compilation of potentially numerous incidents reported by any agency within Indiana that is required to report it. Further, it is gathered and indexed under the child's name or some other identifier. This record is different from an individual police department maintaining a daily log, by incident, and undifferentiated with respect to the age or even identity of the suspect. In essence, the information is different. Therefore, it would be a leap of logic to conclude that the legislature meant to restrict disclosures under APRA because of IC 10-13-4. Also, any restrictions placed on disclosure of juvenile history data by the State Police under IC 10-13-4-12(c), by the terms of the statute, would not apply to the South Bend Police Department.

I also point out that under the logic of the South Bend Police Department, certain information about a juvenile when the juvenile is detained for a delinquent act that would be a felony if committed by an adult would also not be disclosable under IC 31-39-3-2(1). This may in fact be what Mr. Bodnar is arguing when he says on page 2 of his letter: "Therefore, the release of information concerning misdemeanors and infractions by juveniles is governed only by Title 31." In any case, I also doubt whether the legislature intended IC 31-39-3-2 to be affected by IC 10-13-4, for the same reasons as stated in the preceding paragraph.

This result is not illogical, based on the policy arguments that you make in your memorandum. Information compiled in a format this is easily searchable by name and is compiled in a systematic way may merit more protection than the limited information available in the daily incident log. I also emphasize that as I read IC 5-14-3-5(c),

information regarding the identity or age of a suspect is not required to be noted in the daily incident log. This militates against my finding a conflict between the two statutes.

Limited Criminal History Data

You have also raised an issue concerning the parties' disagreement about the effect on IC 5-14-3-5 of the restrictive disclosure provisions in the criminal history data statute at IC 10-13-3. I note that Mr. Bodnar's June 11 letter doesn't specifically raise an issue with respect to IC 10-13-3, but I will give an opinion based on your letter which raises the issue. My analysis is much the same as it is with respect to juvenile history data, although due to the more restrictive definition of "criminal history data" compared with that of "juvenile history data," I am convinced that IC 10-13-3 is not an impediment to the media or public receiving information required under IC 5-14-3-5(a) through (c).

IC 10-13-3-5 defines "criminal history data" as information collected by criminal justice agencies [and others] consisting of (1) "Identifiable descriptions and notations of **arrests, indictments, informations or other formal criminal charges**; (2) Information regarding a sex and violent offender...; and (3) Any disposition, including sentencing, and correctional system intake, transfer, and release. IC 10-13-3-5. "Limited criminal history" is solely arrests and criminal charges, including dispositions of those charges. IC 10-13-3-11. Again, there are inherent differences between the information required to appear on the incident log and information collected in the central criminal history database, in the same respects as for juvenile history data. In addition, the incident log contains more information than is required to be retained in the criminal history data, which arguably contains no information that must be part of the incident log. I do not believe that there is any overlap in information that must appear in either. Accordingly, in my opinion, there are no legal restrictions on maintaining and disclosing information on the daily incident log because of the restrictions contained in IC 10-13-3.

Conclusion

The area of law enforcement records is somewhat complex, and I hope that I have covered all aspects of the questions regarding what the South Bend Police Department must disclose in its daily incident log. If I have omitted an area of contention, please let me know and I will be happy to offer any follow-up guidance you or Mr. Bodnar feel is necessary.

Sincerely,

Karen Davis

cc: Thomas L. Bodnar