

January 20, 2006

Curtis L. Jackson
#973802
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-264; Alleged Violation of the Access to Public Records Act by the Evansville Police Department

Dear Mr. Jackson:

This is in response to your formal complaint alleging that the Evansville Police Department (“Department”) violated the Access to Public Records Act by failing to respond to your request for records. I find that the Evansville Police Department did not violate the Access to Public Records Act, but the Department may not charge you an excessive copying fee for records.

BACKGROUND

You state that you sent the Department a request for records on November 11, 2005. You asked for a copy of “all information, documentation, analyses, and all other materials pertinent to the murder investigation of George Milligan and Cause NO. 82C01-9811-CF-1122.” You filed your formal complaint on December 21, 2005 after receiving no response from the Department.

I sent a copy of your complaint to the Department. I received a letter from Lt. Tonya Wisner in response. I have enclosed a copy of her response for your reference. Lt. Wisner stated that she cannot confirm or deny that you sent the Department a request, but the Department has no record of having received your request for the records. She also indicated that some of the records you are seeking may be exempt under the investigatory records exception, and would not be provided. Any records contained in the daily log, called an “initial case report” would be provided. Lt. Wisner continued that you must send a self-addressed stamped envelope if you wish

to obtain the records via U.S. Mail. There would be a fee of \$3 for the initial case report. Lt. Wisner attached a copy of the Evansville Police Department's schedule of copying fees. Among other charges, the fee schedule shows that "case reports" are available for \$3.00, affidavits, \$3.00, and accident reports, \$3.00.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). One of the exceptions to disclosure contained in section 4 is for investigatory records of law enforcement. IC 5-14-3-4(b)(1). Records that are compiled in the course of a criminal investigation may be withheld in the discretion of the public agency. *See* IC 5-14-3-2(h). Notwithstanding this exception, a public agency is required to maintain, and disclose upon request, a listing of suspected crimes, accidents, and complaints. IC 5-14-3-5(c). This information is sometimes referred to as the "daily log." *See* IC 5-14-3-5(c). Among the information about an alleged crime that must be disclosed is the time, date, and location of the occurrence, the name and age of any victim, unless the victim is a victim of a crime under Indiana Code 35-42-4, the factual circumstances surrounding the incident, and a general description of any injuries, property, or weapons involved. IC 5-14-3-5(c)(3).

The Department has indicated that it is willing to give you all records that it is required to give you in the daily log. The remaining records regarding the murder investigation in the Department's possession that are "investigatory records of law enforcement" will not be provided. In my opinion, the Department may withhold records that are investigatory records, but must issue a timely and complete denial of those records when it receives your request for records with the self-addressed stamped envelope. *See* IC 5-14-3-9(c). The APRA does not require that an agency mail records to a requester free of charge. Therefore, I suggest that you make arrangements to pay the postage for the records you request of the Department. The Department did not violate the APRA when it failed to respond to your request for records if it did not receive your request.

The Department has also indicated that it intends to charge you a \$3 fee for an initial case report. Lt. Wisner provided a copy of the current Evansville Police Department's fees for copying. A copying fee that is not established by the fiscal body for the public agency is not permitted under the Access to Public Records Act. For a local public agency to charge a copying fee, the fee must be established by the fiscal body of the public agency, and the fee may not exceed the actual cost of copying. IC 5-14-3-8(d). "Actual cost" means the cost of the paper and the per-page cost for use of copying equipment. *Id.* The fee may not include labor costs, overhead costs, or costs to search for the records. *Id.*; IC 5-14-3-8(b)(2). Hence, the cost of copies for Department records must be established by the Evansville Common Council (or City Council, as it is known). The fee may not exceed the actual cost of copying.

For motor vehicle accident reports only, a fee of \$3 is sanctioned by IC 9-29-11-1. *See* IC 5-14-3-8(f)(requiring that a public agency collect a copying fee specified by statute).

CONCLUSION

Because the Evansville Police Department has no record of having received your request for records, it had no obligation to respond to your request. The Evansville Police Department may not charge a copying fee for the initial report in excess of the fee established by the fiscal body for the Department, and the fee may not exceed the actual cost of copying.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lt. Tonya Wisner