

February 14, 2007

Joseph T. Williams-Bey  
#910763  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 07-FC-19; Alleged Violation of the Access to Public Records Act by the Elkhart Police Department*

Dear Mr. Williams-Bey:

This is in response to your formal complaint alleging that City of Elkhart Police Department (“Department”) violated the Access to Public Records Act by denying you arrest reports and other information about four individuals, as well as a history of dispatch reports to certain addresses. I find that the Department is required to send you a record only once; in addition, I find that the Department may deny you a police report, but must provide the daily log.

#### BACKGROUND

You requested “arrest reports and supplementary” regarding four individuals that you named and for which you provided specific information. You also asked for a history of dispatch reports to two addresses in Elkhart. You claim to have not received a response to the requests that are dated January 2, 2007.

I enclose a copy of the response of the Department, sent by City Attorney Lawrence J. Meteiver. Mr. Meteiver states that the Department has fielded many duplicative requests from you, all of which the Department has responded to. Yet, no request for records has been denied just because you have received the same records in the past. Mr. Meteiver also notes that the records concerning police reports are not disclosable under the investigatory records exception, Indiana Code 5-14-3-4(b)(1).

## 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). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial is in writing or by facsimile, and the denial includes the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

A public agency must provide at least one (1) copy of the public record. IC 5-14-3-8(e). I do not read this provision to require that the public agency provide duplicative copies of the same record.

A public agency may except from disclosure at the discretion of the agency “investigatory records of law enforcement agencies.” IC 5-14-3-4(b)(1). This was the exemption cited by the Department in its recent response. An investigatory record is one that is compiled in the course of an investigation of a crime. IC 5-14-3-2(h). A police report would be an investigatory record of law enforcement, so long as the report involves a criminal investigation.

The investigatory records exemption also states: “However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.” IC 5-14-3-4(b)(1). Section 5(c) sets out the specific types of information that must be included in the law enforcement agency’s daily log:

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.

Your request for the arrest reports and supplemental information would include information contained in the daily log. The Department should have supplied the applicable daily log to you in response to your request. Since the Department invited me to review the Department's response to your request, I am confident that the Department will provide a copy of the daily log with respect to arrest reports you reference. If the Department needs clarification with respect to any part of your request, the Department should contact you for clarification. In addition, I enclose the dispatch reports regarding the two addresses you requested.

#### CONCLUSION

For the foregoing reasons, I find that the Elkhart City Police Department should have provided you a copy of the daily log or responded that it would provide the daily log to you, although the arrest reports are exempt.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Lawrence J. Meteiver