

August 29, 2007

James Donato
Capitol Publishing
5041 Lyda Lane
Colorado Springs, CO 80904

Re: Formal Complaint 07-FC-224; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Donato:

This is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to draft accident reports. A copy of the Department’s response to your complaint is enclosed. It is my opinion that draft accident reports created by the Indianapolis Metropolitan Police Department are public records and must be produced absent an exemption but that the Department is not required to produce the reports as soon as they are created.

BACKGROUND

In your complaint you allege that on July 18, 2007 you submitted to Major Pierce of the Department a request for records, specifically accident reports with an accident report date of July 17. On July 26, having received no response, you contacted Major Pierce to determine the status of the request. Major Pierce advised you he would not allow inspection of the records (draft accident reports) at his station but that you could obtain access to copies of the final reports at the records division office. You filed your complaint on July 30, alleging the Department has denied you access to records. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to your complaint by letter from assistant corporation counsel Lauren Toppen. The letter was undated but received by this office on August 22. Ms. Toppen provides further background regarding the relationship between Capitol Publishing and the Department related to accident reports. The history of this relationship is also outlined in *Opinion of the Public Access Counselor 07-FC-27* in which on March 2, 2007 Counselor Davis issued an opinion regarding a very similar matter. Since that opinion, the Department has

implemented a new accident reporting system which took effect July 1. Under this new system, an officer submits a report via a laptop computer directly to the Indiana State Police (“ISP”) and/or its contractors. Prior to submission, the report is available only to the reporting officer on his or her laptop and cannot be tracked through a centralized records system. Once the officer finishes the report, he or she then sends it to the Crash Investigations Unit (“CIU”) by moving the report to a shared folder. The CIU reviews the report and sends it to the ISP or back to the officer for more information. This CIU process occurs within 24 hours for weekday reports and 72 hours for weekend reports. When the report is sent to ISP, it is no longer under the control of the Department, as it is actually removed from the Department’s computer system. When ISP posts the report on its database, the Department is then able to make the report available for inspection or purchase at its Citizen’s Services Division office at the City-County Building.

As for your specific request regarding the July 17 accident reports, Ms. Toppen asserts that you have now received all records. Ms. Toppen further asserts that the Department did not deny you access to those reports.

Ms. Toppen contends that the Department’s new reporting system complies with the APRA and that because reports are produced within seven days, a written response to your request is not required. Ms. Toppen does not dispute that draft reports are public records, but she asserts there are no special production requirements for draft documents. Ms. Toppen further contends that requiring the reports or draft reports to be produced sooner would materially interfere with the function of the Department in contravention of §5-14-3-7(a).

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. 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 days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. A response could be, but is not required to be, production of records. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public

employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

If the request is submitted in writing, a denial must be in writing as well. I.C. §5-14-3-9(c). There is no requirement in the APRA that a response must be in writing when the request is granted or documents are produced.

Because Counselor Davis opined regarding the status of accident reports as public records in *Opinion of the Public Access Counselor 07-FC-27*, the only issues to address here are whether the Department violated the APRA by not responding to your July 18 request and whether the Department's new procedure provides for production of the draft reports in a reasonable time.

Counselor Davis addressed the issue of the draft accident reports and their status as public records in *Opinion of the Public Access Counselor 07-FC-27*, which was issued on March 2, 2007 after you filed a complaint against the Indianapolis Metropolitan Police Department. In that opinion, Counselor Davis opined as follows:

"I also find that the crash reports that are not yet completed and filed with the Records Division are nevertheless the public records of the Department. Unless an exemption applies to the "draft" crash reports, they must be disclosed upon request. The Department is not required to place draft crash reports in the public basket, because the APRA does not require that a public agency provide its public records in this manner, i.e., without a specific request for them. You have also told me that you want the crash reports as soon as they are created because the preliminary information is valuable to you even though not all the information is accurate. The Department should provide these public records to you, and may mark them "draft" to make it clear that they are not the official crash report of the Department."

Opinion of the Public Access Counselor 07-FC-27 at pages 3-4.

But in your request to the IMPD dated July 18, you quoted Counselor Davis as having opined as follows:

"I find the crash reports that are not yet completed and filed with the Records Division are nevertheless the public records of the Department. Unless an exemption applies to the 'draft' crash reports, they must be disclosed upon request. The Department should provide these public records to you as soon as they are created, and may mark them 'draft' to make it clear that they are not the official crash report of the Department."

I do not find the exact quotation you included in your July 18 request anywhere in Counselor Davis's opinion. If this is intended to paraphrase Counselor Davis's opinion, I do not

believe it to be an accurate paraphrase. It is my opinion Counselor Davis did not intend to indicate the Department was under an obligation to provide the draft reports as soon as they are created. Her opinion was that they are public records which must be provided in response to a request unless an exemption applies. On March 20 Counselor Davis issued a memorandum to Indiana law enforcement officers and agencies regarding crash reports. In that memorandum, she provided the following opinion: "For most requests for recent crash reports, a person's request should be able to be fulfilled in 2-3 days. This is a guideline and may vary depending on factors such as the temporary absence of the records officer, the number of reports requested, or other unusual circumstances." I have enclosed a copy of the memorandum. I agree with Counselor Davis's opinion relayed in this memorandum.

There is no dispute that the draft accident reports are public records. The Department acknowledges that they are. The issue here, though, is time of response to your request for records. As I understand it from Ms. Toppen's description of the procedure utilized for accident reports, the final reports are available within a few days. It is my opinion, based on the procedure outlined by Ms. Toppen and the steps through which a report must flow to be finalized, this is not an unreasonable amount of time for production of the final reports.

As it relates to draft reports, I understand you believe you should receive those as soon as they are created. Nothing in the APRA requires production of documents within a specified timeframe or as soon as they are created. As Ms. Toppen notes, there are no special APRA provisions for draft documents. While you are certainly entitled to access to the draft reports unless they fall under an exemption, I cannot find that you are entitled to access to them as soon as they are created. The APRA cautions public agencies to regulate any material interference with the regular discharge of its functions or duties. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). By putting in place a system for finalizing reports that results in a much shorter timeframe from beginning to end, I believe the Department is acting in good faith to provide the public access to these reports. I do not believe it is within the spirit of the APRA to ask the Department to change this new procedure to provide faster access to draft reports.

Regarding your July 18 request, you allege the Department violated the APRA by not responding to the request. If the Department did not respond to your request or produce the records within seven days of receipt of the request, the Department violated the APRA. I.C. §5-14-3-9(b). If the Department produced the records you requested within that seven days, it did not violate the APRA. If the Department within the seven days confirmed it would produce the records, it did not violate the APRA, even if the actual production did not occur within seven days.

CONCLUSION

For the foregoing reasons, it is my opinion that draft accident reports created by the Indianapolis Metropolitan Police Department are public records and must be produced absent an exemption but that the Department is not required to produce the reports as soon as they are created.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive, flowing style.

Heather Willis Neal
Public Access Counselor

cc: Lauren Toppen, Office of Corporation Counsel, City of Indianapolis
Major Pierce, Indianapolis Metropolitan Police Department