



# STATE OF INDIANA

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August 22, 2011

Mr. Ricky William Outlaw  
4490 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 11-FC-207; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department*

Dear Mr. Outlaw:

This advisory opinion is in response to your formal complaint alleging the Fort Wayne Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Christine Darrah, Keeper of Records for the Department, responded to your complaint. Her response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you submitted a written request to the Department on April 28, 2011 for all police and/or accident reports regarding an accident that occurred on July 12, 1990 that resulted in your arrest. In response to your request you were supplied with "miscellaneous papers from a computer." You thereafter resubmitted your request on May 20, 2011. The Department responded that a \$3.00 copying fee was required prior to the records being provided. After you made arrangements to pay the fee, on July 6, 2011 you received from the Department the same "miscellaneous papers."

In response to your formal complaint, Ms. Darrah responded on behalf of the Department. Ms. Darrah admitted that the Department failed to provide to you in response to your request the actual accident report. The Department has since submitted to you and enclosed with its response to your formal complaint, a copy of the accident report from July 12, 1990. Ms. Darrah noted that the July 12, 1990 accident was also tied to a criminal investigation regarding a burglary/stolen vehicle, and as such any other reports were being withheld pursuant to the investigatory records exception provided under I.C. § 5-14-3-4(b)(1).

## 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. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public 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 in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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. Here, the Department responded to your request within the seven-day time period required by the APRA.

The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. Specifically, the APRA obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. The following information must be maintained in the daily log:

- (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.
- I.C. § 5-14-3-5(c).

You requested a copy of the police report and/or accident report from a July 12, 1990 accident that resulted in your arrest. The Department has provided that it failed to provide you with the accident report from the incident, but otherwise it has provided all documents in response to your request. The Department has since provided you with a copy of the accident report and I have enclosed a copy that was submitted. It is my opinion that the Department violated the APRA when it failed to provide you with the accident report in response to your 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. An investigatory record is “information compiled in the course of the investigation of a crime.” I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, 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*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* That being said, when the accident report submitted by the Department is read in connection with the documents that have previously been provided, it is my opinion that the Department has complied with all the APRA.

Finally, the APRA permits a public agency to charge a fee for copies of public records. *See* I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. *See* IC 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. Thus, the Department did not violate the APRA in its request for payment for records responsive to your request.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated the APRA when it failed to disclose the accident report in response to your records request. As the Department has now provided all other documents responsive to your request, it is my opinion that it has not otherwise violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Christine Darrah, Fort Wayne Police Department