

December 17, 2002

Ms. Jennie L. Scott
Attorney at Law
Smith Law Office
119 S. Liberty Street
Muncie, Indiana 47305

Re: *Advisory Opinion 02-FC-65*; Alleged Denial of Access to Public Records by Ball State University

Dear Ms. Scott:

This is in response to your formal complaint, which was received on November 21, 2002. You have alleged that Ball State University ("University") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you allege that you were wrongfully denied access to public records under Indiana Code section 5-14-3-4(b)(1), the investigatory records exception. Mr. Steven Murphy, an attorney for the University, responded in writing to your complaint. A copy of his response is enclosed.

For the reasons set forth below, it is my opinion that the University's police department has discretion over the disclosure of law enforcement investigatory records under Indiana Code section 5-14-3-4(b)(1). There is nothing in the APRA or case law that supports the notion that this exception does not apply to the arrested person or his attorney.

BACKGROUND

According to your complaint, in a letter dated October 29, 2002, you requested copies of information from the University concerning the arrest of your client, Mr. Charley A. Pond IV. You received a written response from Ms. Heather Shupp, Executive Director of University Communications. While many of the public records you requested were made available in response to your request, you contest the University's determination that certain information qualifies as investigatory records that are not required to be disclosed under Indiana Code section 5-14-3-4(b)(1). In particular, you requested:

1. Any records from Ball State University Police Department regarding the arrest of Charley A. Pond IV on the morning of May 23, 2002. This request includes any and all telephone logs, telephone call slips, tape recordings of radio calls regarding the arrest of Charley Pond; and
2. Any and all officer's notes and supplemental reports regarding your client's arrest.

Ms. Shupp responded to the first-listed request by stating that the University had provided the arrest report, the shift activity log, and dispatch log for the stated date. She also stated that there were no recordings of dispatch calls. As to any other information or records related to the arrest, the University cited to Indiana Code section 5-14-3-4(b)(1), the investigatory records exception as the basis for nondisclosure. Similarly as to the second-listed request, Ms. Shupp stated that the University had already provided you with any disclosable public records concerning the arrest and that any information that was not provided in the arrest report qualified as investigatory records that are nondisclosable under Indiana Code section 5-14-3-4(b)(1).

In a follow-up letter from Mr. Gregory Smith of your law firm, it was stated that it is your firm's position that since you requested this information as the attorney representing the person who is the subject of these public records, your request is different under the APRA. Mr. Smith stated that the University police department arrested your client, but no formal charges were ever filed so you were unable through the typical criminal discovery process to obtain this information. It is your position, therefore, that this exception to disclosure is not applicable and that the requested information should be produced.

In response to your complaint, Mr. Murphy stated that he believes the denial was appropriate under Indiana Code section 5-14-3-4(b)(1). The University apparently did disclose to you information about the arrest as required under Indiana Code section 5-14-3-5. Mr. Murphy stated that it is his opinion that there is no different disclosure standard for the person who was arrested and his attorney as there is for anyone else who may request access to these public records. The APRA provides a public agency discretion to protect investigatory materials, presumably to further the law enforcement agency's ability to investigate crimes. By exercising its discretion not to release the additional public records you requested, the University believes that it has complied with the requirements and intent of the APRA.

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." Ind. Code §5-14-3-1. The University is clearly a public agency for the purposes of the APRA. Ind. Code §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the University during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code §5-14-3-3(a).

One of the exceptions to disclosure, Indiana Code section 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over whether or not to disclose its investigatory records. Investigatory records are defined as "information compiled in the course of the investigation of a crime." Ind. Code §5-14-3-2. The University has a police department that is a law enforcement agency. The University, therefore, has discretion over the disclosure of investigatory records of its police department—they may either disclose or not disclose these public records in response to a public records request

under the APRA.

Not all information compiled by a law enforcement agency, however, is subject to the investigatory records exception. The APRA, specifically Indiana Code sections 5-14-3-5(a) and (c), set forth the information about arrests and suspected crimes, accidents or complaints that must be provided upon request.

(a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including his name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
 - (A) time and location of the arrest or the issuance of the summons;
 - (B) investigating or arresting officer (other than an undercover officer or agent); and
 - (C) investigating or arresting law enforcement agency.

(c) 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.

Indiana Code § 5-14-3-5. [Emphasis added.]

According to the information provided to me, the University did provide you with information required to be disclosed under Indiana Code section 5-14-3-5 concerning the arrest of your client.

The University did not, however, disclose to you other information related to the arrest on the basis that this information constituted investigatory records. "Investigatory records" are defined as "information compiled in the course of the investigation of a crime." Ind. Code §5-14-3-2. The University's police department is a law enforcement agency and under Indiana Code section 5-14-3-4(b)(1) a law enforcement agency has discretion over the disclosure of its investigatory records. You claim, however, that under the APRA, your request is not subject to this exception to disclosure because you represent the arrested person. There is no such exception either in the text of the APRA or any appellate court

decisions. I understand that since no criminal charges have been filed the criminal discovery rules do not apply, but there is no legal authority that requires the University to disclose this information to you under the APRA. For these reasons, it is my opinion that the University did not violate the APRA by exercising its discretion not to disclose investigatory records concerning the arrest of your client to you.

CONCLUSION

It is my opinion that Ball State University did not deny you access to certain information you requested concerning your client's arrest under the APRA. The University did disclose information as required under Indiana Code section 5-14-3-5, but had discretion over the disclosure of any other information concerning this incident under Indiana Code section 5-14-3-4(b)(1).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Steven D. Murphy w/o enclosures
