



STATE OF INDIANA

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February 28, 2013

Derek L. Morris
DOC 104145
3038 W 850 South
Bunker Hill, Indiana 46914-9810

Re: Formal Complaint 13-FC-31; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Samantha Karn, Corporation Counsel, responded on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that the Department estimated, in response to a previous formal complaint that you had filed, that all records responsive to your initial and supplemental request would be disclosed as early as September 21, 2012. As of January 31, 2013, the date you filed your formal complaint with the Public Access Counselor, you allege that you have still yet to receive any records that are responsive to your request or any further response from the Department.

In response to your formal complaint, Ms. Karn advised that you submitted four separate requests for records to the Department. Your initial request ("Request One"), submitted on December 12, 2011, sought "the last 3 most recent reports for the following (after 2006)." You identified 65 individuals, of which certain parties were only identified by first name. The second request ("Request Two"), submitted on or about February 8, 2012, was identical to Request One, but added eight additional individuals to the search. The third request ("Request Three"), submitted May 3, 2012, sought "the following specific reports only, including the attached pages" for sixty-seven individuals. The fourth request ("Request Four"), submitted August 1, 2012, stated "if you can get me these police reports within two weeks, I'll cancel my four page request on May 3, 2012." Fifteen persons were identified in Request Four.

As to Request One, the Department replied on December 16, 2011 within the requirements of section 9(b) of the APRA. For eighteen of the persons requested under Request One, you only provided a first name. As such, the Department believes the request was not made with reasonable particularity as required by section 3 of the APRA.

As to Request Two, again the Department acknowledged the receipt of your request pursuant to the requirements of section 9(b) of the APRA. You also sent a check with your request, which had not been requested by the Department. The check was returned to you. Your request, being identical to Request One, minus the addition of eight individuals, sought "reports" which the Department has interpreted to be police reports, as you are making your request of a law enforcement agency.

As to Request Three, the request was timely acknowledged by the Department pursuant to the requirements of section 9(b) of the APRA. As your request sought "reports" again the Department assumed that you were seeking police report, as you were making your request of a law enforcement agency. As to Request Four, the Department failed to acknowledge in writing the receipt of the request.

On January 31, 2013, the Department denied your all requests that had been submitted pursuant to I.C. § 5-14-3-4(b)(23)(A)(iv) and I.C. § 5-14-3-4(b)(23)(B). You are currently an offender located the Miami Correctional Facility. You were convicted of child molestation, a Class A Felony. The records that you requested predominately concerned incident reports involving child molestation complaints and harassment. Regardless of the nature of the incident reports, each report contains personal information relating to the victims of the crime. Give your status as a sexual predator and an "offender" under the APRA, the Department denied your request pursuant to (b)(23)(A)(iv) and (b)(23)(B).

As to the timing of the Department's substantive response to the request, the requests that were submitted were voluminous and required the Department to search and review police/incident reports for 165 people. For each person listed, you sought the most recent 2-3 reports. Thus, there were approximately 330-495 reports that were reviewed. The Department does concede that the final denial letter should have been sent sooner. In light of the personnel changes and hiring freezes within the City's Office of Corporation Counsel, the agency's response times for production have unfortunately suffered. Regardless of the delay, the Department contends that its denial was proper.

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 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). 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 acknowledged that it failed to respond in writing upon receipt of Request Four. As such, it is my opinion that the Department acted contrary to the requirements of section 9(b) of the APRA in response to Request Four.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

I have previously addressed the timeliness of the Department's response to your multiple requests for records in Opinion of the Public Access Counselor 12-FC-249, which was issued on September 25, 2012. *See Opinion of the Public Access Counselor 12-FC-249*. I opined that:

"As applicable to your May request, I would note that your request consists of sixty eight (68) separate requests for police reports for various individuals. In some parts, you requested multiple reports on an individual, in others you have only provided a first name for the Department to utilize in its search. The Department has provided that it began the search for the records that were responsive to your request upon its receipt, but noted that the search for police reports is predominately a manual process. In addition, the Department has the responsibility under

the APRA to review all records prior to disclosure. During the process of responding to all public record requests received by the Department, it is responsible for maintaining the normal duties of the agency. As such, it is my opinion that the Department has complied with the requirements of I.C. § 5-14-3-3(b) in responding to your May request. As the Department has now provided that it anticipates in having all records responsive to your requests within fifteen (15) days, at which time you will be informed of the fees associated, I trust that this is in satisfaction of this part of your formal complaint.”

The Department concedes in its response that the denial letters, sent on January 31, 2013, should have been sent at an earlier date. Although I am mindful of the personnel changes and hiring freezes that have affected the Department and the City’s Office of Corporation Counsel and the quite broad nature of your request, it is my opinion that the Department acted contrary to the requirements of section 3(b) of the APRA in response to your request.

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). The Department, after gathering and reviewing all records responsive to your request, ultimately denied the requests in writing pursuant to I.C. § 5-14-3-4(b)(23)(A)(iv) and I.C. § 5-14-3-4(b)(23)(B). There is no dispute that you are currently confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure to an “offender” for a record that contains personal information relating to a victim or contains information that would concern or affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) a law enforcement officer (as defined in IC 35-31.5-2-185).
 - (iii) a judge (as defined in IC 33-38-12-3);
 - (iv) the victim of a crime; or
 - (iii) a family member of a correctional officer, law enforcement officer, judge, or the victim of a crime;
- or

(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

The Department advised that you were convicted of child molestation, a Class A Felony. The records that you requested predominately concerned incident reports involving child molestation complaints and harassment. Regardless of the nature of the incident reports, each report contains personal information relating to the victim of the crime. Given your

status as a sexual predator and an “offender” under the APRA, Ms. Karn advised that the Department denied your request in writing pursuant to (b)(23)(A)(iv) and (b)(23)(B). As such, it is my opinion that the Department did not violate the APRA by denying your request for records that contained victim’s personal information and when such disclosures would concern or could affect the security of a jail or correctional facility.¹

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department acted contrary to the requirements of section 9(b) of the APRA in response to Request Four. It is my opinion that the Department acted contrary to the requirements of section 3(b) of the APRA in response to all requests that were submitted. Lastly, it is my opinion that the Department’s denial of your requests complied with the requirements of sections 9(c), 3(b)(23)(A)(iv), and 3(b)(23)(B) of the APRA.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Samantha Karn

¹ Had the Department solely denied your request pursuant to I.C. 5-14-3-4(b)(23)(A)(iv), it would have been required to redact the victim’s personal information and pursuant to section 6 of the APRA provide the remaining parts of the record that were discloseable.