



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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February 28, 2013

Mr. Chad Farrell
DOC 128294
1946 West U.S. Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 13-FC-61; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Mr. Farrell:

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 the Records, responded on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on February 4, 2013 you submitted a written request for records to the Department for copies of all of the following records:

"Your investigation, your findings, any and all documentation, reports, pictures, and any and all other information regarding the death of my eighteen [18] year old nephew Chase Logan Farrell's death that occurred between 25-Feb-2012 and 27-Feb-2012."

On February 11, 2013, Ms. Darrah responded in writing on behalf of the Department to your request. Ms. Darrah provided that the Department had received your request and with the exception of certain narratives, the remainder of your request was denied pursuant to I.C. § 5-14-3-4(b)(1). Ms. Darrah further provided that upon receipt of the respective fees and a self addressed stamped envelope, a copy of the records would be provided to you. You believe that the Department improperly denied your request and question the fees associated with the records that are to be disclosed.¹

¹ You submitted eighteen (18) identical formal complaints against the Department, the only variation being a separate officer of the Department was cited as the person responsible for the denial. After reviewing all correspondence submitted by the parties, you also submitted eighteen separate identical records requests to the Department on or about February 4, 2013, again with the only variation being a different officer was listed. Ms. Darrah responded to your requests in a single response on February 11, 2013. Formal

In response to your formal complaint, Ms. Darrah advised that your request was predominately denied pursuant to the investigatory records exception provided under I.C. § 5-14-3-4(b)(1). The Department did elect to disclose certain hand written narratives from the investigation and would produce a copy of the 9-page narrative upon receipt of \$9.00 and a self-addressed stamped envelope. The fee was charged pursuant to Fort Wayne Ordinance S-92-96 and I.C. § 5-14-3-8. Pursuant to the fee schedule, original computer reports are \$1.00 per page; miscellaneous hand-written copies are \$.09 per page. As the narratives that are to be provided are computer generated, the fee is \$9.00 as there are nine pages in the report.

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). 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.

The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. There is no dispute that the Department is considered to be a “law enforcement agency.” An investigatory record is “information compiled in the course of the investigation of a crime.” *See* 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*. It is my opinion that the Department would not violate the APRA by exercising the discretion provided to it under I.C. § 5-14-3-4(b)(1) and denying your request for investigatory records maintained by the Department.

complaints filed with the Public Access Counselor’s office are filed against an agency, not an individual. Thus, as the requests and complaints are all identical, minus a separate officed being listed, I have combined all of your formal complaints into single formal complaint.



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The Department has provided that it is willing to produce to you a nine-page narrative from the investigation. The Department has advised that the fee schedule adopted by the City of Fort Wayne in Ordinance S-92-96 provides that original computer reports are \$1.00 per page; miscellaneous hand-written copies are \$.09 per page. The Department has advised that upon receipt of a self-addressed stamped envelope and \$9.00, it will produce the records to you. You challenge the ability of the Department to charge \$1.00 per page for the report that is to be disclosed.

For public agencies that are not state agencies, the fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. *See* I.C. § 5-14-3-8(d). The fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) for color copies; or the actual cost of to the agency of copying the document. *See* I.C. § 5-14-3-8(d). Actual cost means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. *Id.* The fee for certification of documents may not exceed five dollars (\$5) per document. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers. *Id.* A public agency may require that payment for copying costs be made in advance. *See* I.C. § 5-14-3-8(e). An agency may only charge a fee greater than what is provided in section 8 of the APRA pursuant to a specific state statute (e.g. I.C. § 9-29-11-1 provides that a law enforcement agency may charge a fee not less than \$5.00 for an accident report).

The Department's fee for original computer reports is \$1.00 per page. It appears that the \$1.00 fee does not include any charge for the certification of the record; it is a simply a copying fee. It should also be noted that your request did not seek certified copies. I am assuming the records involved are black and white copies that measures 8.5" x 11". The Department would only be allowed to charge the greater of \$.10 per page or the "actual cost" of copying the record. "Actual cost" would be the cost of a single sheet of paper and the cost of creating the copy. By way of reference, a state agency would be limited to a fee of \$.10 per page for a black and white copy measuring 8.5" by 11". It is my opinion that the Department has not sustained its burden in demonstrating that the \$1.00 per page fee is compliant with section 8 of the APRA. The Department would be required under the APRA to charge the greater of \$.10 per page or its "actual cost", minus specific statutory authority to charge an increased fee. The Department can require that you pay the respective fee in advance and that you provide a self-addressed stamped envelope in order for the records to be provided to you.

CONCLUSION

Based on the foregoing, it is my opinion that the Department did not violate the APRA by denying your request pursuant to I.C. § 5-14-3-4(b)(1). Further, it is my opinion that the Department has not sustained its burden in demonstrating that the \$1.00 per page fee is compliant with section 8 of the APRA. The Department would be required under the APRA to charge the greater of \$.10 per page or its "actual cost", minus specific statutory authority to charge an increased fee.

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: Christine Darrah