



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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March 25, 2013

Ms. Lori L. Caldwell
1433 E. 83rd Avenue
Merrillville, Indiana 46410

Re: Formal Complaint 13-FC-84; Alleged Violation of the Access to Public Records Act by the Munster Police Department

Dear Ms. Caldwell:

This advisory opinion is in response to your formal complaint alleging the Munster Police Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Eugene M. Feingold and Steven P. Kennedy, Attorneys, responded in writing to your formal complaint. Their response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a request for records to the Department on March 4, 2013 for the following records:

- All police logs and public reports related to the death of Erica Veldinia on January 1, 2013;
- A recording of all emergency radio traffic related to the incident, beginning with the first 911 call and continuing until all units were clear from the scene;
- A list of all units arriving at the scene, the time of arrival, their assignment at the scene, and the time of their departure. You requested that the SWAT team be included in this account.

On March 7, 2013, Chief Steve Scheckel denied your request pursuant to I.C. § 5-14-3-4(b)(1) and Munster Town Council Resolution #1739. You allege that the Department’s denial was improper under the APRA.

In response to your formal complaint, the Department advised that it responded to a call in the 800 block of Boxwood Drive on January 1, 2013. It was ultimately determined that those present at the site were Margarito Valdivia and his ex-wife Erica Valdivia. Ms. Valdivia had suffered multiple injuries from which she died. Mr. Valdivia was subsequently arrested and charged with murder, battery by using a deadly

weapon, and battery resulting in serious injury. Mr. Valdivia is currently incarcerated in the Lake County Jail awaiting trial. There is an ongoing criminal investigation into all of the facts and circumstances surrounding the death of Ms. Valdivia.

The Department received your request on March 6, 2013, to which Chief Scheckel responded on the date of its receipt. Chief Scheckel advised that your request sought investigatory records of a law enforcement agency that were excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1) and Munster Town Council Resolution No. 1739. Pursuant to I.C. § 5-14-3-5, information regarding the suspect, his age, criminal charges, and the status of the charges was provided. All other information was properly denied pursuant to I.C. § 5-14-3-4(b)(1) and Munster Town Resolution No. 1739.

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 (emphasis added). *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 responded to your written request within seven (7) days of its receipt. As such, it is my opinion that it complied with section 9(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 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



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broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157.*

However, the APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. In this regard, information must be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. *Id.* I.C. § 5-14-3-5(a) provides that 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 the person's 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 agency); and
 - (C) investigating or arresting law enforcement agency.

If a person is received in a jail or lock-up, I.C. § 5-14-3-5(b) provides that the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person is being held.
- (3) The time and date that the person was received and time and date of the person's discharge or transfer.
- (4) The amount of the person's bail or bond, if it has been fixed.

Finally, I.C. § 5-14-3-5(c) 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 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 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

Counselor Neal provided the following guidance regarding a law enforcement agency's requirements pursuant to I.C. § 5-14-3-5(c):

In some instances, a law enforcement agency will not maintain a separate record titled "daily log" but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log information, the agency will generally provide copies of incident reports. In some cases, the agency will redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying. *Opinion of the Public Access Counselor 09-FC-93.*

As applicable here, your initial request sought a copy of all police logs and public reports related to the death of Ms. Valdivia. The Department denied your request in writing pursuant to I.C. § 5-14-3-4(b)(1). However, the information required to be provided under section 5 of the APRA may not be denied pursuant to the discretionary power of nondisclosure provided to the Department pursuant to I.C. § 5-14-3-4(b)(1). As such, it is my opinion that the Department acted contrary to section 5 of the APRA by denying your request. In applying the Department's response to your formal complaint to the requirements of section 5 of the APRA, I am able to determine the following:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.

The time of the request for assistance was not provided; the substance of the request was that the Department responded to a request for assistance; the location was the 800 block of Boxwood Drive in Munster, Indiana.



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- (2) The time and nature of the agency's response to all complaints or requests for assistance.

The time of the Department's response was not provided; the nature of the response was that officers were sent to the scene at the 800 block of Boxwood Drive in Munster, Indiana.

The incident involved an alleged crime, thus the requirements of I.C. § 5-14-3-5(c)(3)(A)-(D) would apply:

- (3) If the incident involves an alleged crime or infraction:

- (A) the time, date, and location of occurrence.

The time was not listed; the date and location of the occurrence were provided.

- (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;

The name of the victim was provided; the age was not.

- (C) the factual circumstances surrounding the incident;

The Department's response to the formal complaint provided the factual circumstances surrounding the incident.

- (D) a general description of any injuries, property, or weapons involved.

A general description of the injuries were provided; there was no indication that any property damage was involved; the weapon was not provided and it can be assumed that a weapon was involved as the suspect was charged with Battery by means of a deadly weapon.

In order to comply with the requirements of section 5(c) of the APRA, the Department would be required to provide the information cited that has not been included.

As to the remaining two parts of your request, the Department cited to I.C. § 5-14-3-4(b)(1) to deny your request. An investigatory record is "information compiled in the course of the investigation of a crime." *See* I.C. § 5-14-3-2(h). I would note that the trial court, not the Public Access Counselor, is given the opportunity to conduct an in-camera review of the records that would be considered responsive to the request. *See* I.C. § 5-14-

3-9(h). Thus, to the extent that your request sought information or records beyond the requirements of section 5 of the APRA and that the records sought were compiled during the investigation of a crime, it is my opinion that the Department's denial of your request did not violate the APRA. *See also Opinion of the Public Access Counselor 08-FC-64.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Department complied with the requirements of section 9(b) of the APRA in response to your request. It is my opinion that the Department acted contrary to the requirements of section 5(c) of the APRA by denying your request for the log information by citing to I.C. § 5-14-3-4(b)(1). As to records sought beyond section 5 of the APRA, to the extent the records were compiled during the investigation of a crime, it is my opinion that the Department's denial of your request did not violate 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: Eugene M. Feingold, Stephen F. Scheckel