

September 27, 2001

Mr. Kenneth R. Cupp  
#974624 Q-Dorm  
P.O. Box 2222  
Carlisle, IN 47838

*Re: Advisory Opinion 01-FC-53; Alleged Denial of Access to Public Records by the Indianapolis Police Department.*

Dear Mr. Cupp:

This is in response to your formal complaint, which was received on September 4, 2001. You have alleged that the Indianapolis Police Department ("Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Department failed to respond to your public records requests dated August 6, 2001. Sergeant Brian J. Clouse, Legal Advisor to the Department, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not violate the APRA with respect to your August 6<sup>th</sup> public records request.

### BACKGROUND

According to your complaint, on August 6, 2001 and three (3) weeks prior, you mailed a public records request to the Department requesting various public records, including:

1. The policy requirements on the use and care of departmental canines;
2. a copy of Department form 2-2-14 on yourself, which was dated the day of your arrest, June 7, 2000;
3. any and all reports completed by the canine supervisor pertaining to your arrest, the arrest report;
4. and the percentage of serious injury arrests or assisted arrests while utilizing canine units.

As of the filing of your formal complaint, you allege that you had received no response from the Department.

In his response, Sergeant Clouse stated that the Department did not receive your August 6<sup>th</sup> request. The only request that the Department has received from you was a letter postmarked July 23, 2001, requesting a copy of their canine policy. A copy of this request is enclosed for your reference. On August 2, 2001, Ms. Rebecca Motsinger, legal secretary for the Department, noted on the request that she sent you a copy of Department General Order 22.20, which contains the policies and procedures regarding the handling of Department canines.

As far as the items you noted in your complaint related to the August 6<sup>th</sup> request, Sergeant Clouse responded that Department Form 2-2-14 and any other reports relating to the matter are considered investigatory records and not required to be disclosed to you under Indiana Code section 5-14-3-4(b)(1). The Department can provide you with a copy of your arrest report and will send it to you. Finally, the Department does not create or maintain records concerning the percentage of serious injury reports while using Department canines and under the APRA, the Department is not required to create such a report for you.

## 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 Department 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 Department 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).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it appears that the Department did not receive your August 6<sup>th</sup> request. The fact that you received no response to a request that was never received is not a violation of the APRA. It is my opinion, therefore, that the Department did not violate the APRA with respect to your public records request of August 6<sup>th</sup>. Sergeant Clouse did however, in his response to your formal complaint, respond to your request for public records listed in your August 6<sup>th</sup> letter. While some of these documents are not disclosable or do not exist, he is or has forwarded a copy of the book-in (arrest) slip to you.

## CONCLUSION

It is my opinion that the Indianapolis Police Department did not violate the Access to Public Records Act with respect to your August 6<sup>th</sup> request for public records because the Department never received that request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Sgt. Brian J. Clouse, Legal Advisor

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