



STATE OF INDIANA

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April 11, 2013

Emily Champion
Lafayette Journal & Courier
217 N. Sixth Street
Lafayette, Indiana 47901

Re: Informal Inquiry 13-INF-19; Indiana State Police Department

Dear Ms. Champion:

This informal opinion is in response to your inquiry regarding the Indiana State Police Department's ("Department") response to your request for records. Trooper Brad Hoffeditz, Legal Counsel, responded in writing on behalf of the Department. His response is enclosed for your reference. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

You provide that you are working on a story about methamphetamine labs in Indiana and have requested a list of addresses of methamphetamine labs located by the Department in the State. You were initially informed by Sgt. Niki Crawford that the Department cannot release the information that had been requested and suggested that you contact the Indiana Criminal Justice Institute ("CJI") and your local county health department.

Upon receipt of your request, the Tippecanoe County Health Department provided you with a list, although the list did contain all addresses of methamphetamine labs found in the county in 2012. The Health Department was however able to provide as many addresses as possible, some dating back to 2008. The CJI informed you in response to your request that the agency did not receive funding to support a statewide database and that it did not currently track such information.

You thereafter resubmitted your request to the Department. Cpt. Dave Bursten responded on behalf of the Department and advised that pursuant to the investigatory records exception found under I.C. § 5-14-3-4(b)(1), the Department was exercising its discretion provided to it under the statute and denying your request. You inquiry whether the records sought are in fact, investigatory records. You believe that the information is

not part of an ongoing investigation and would therefore not endanger anyone if they were released.

In response to your inquiry, Mr. Hoffeditz advised that the Department does not maintain the records in list format that would be responsive to your request either in the Indiana Methamphetamine Investigatory System (“IMIS”) or in any other database or record. Upon receiving your initial request, the Department referred you to the CJI as law enforcement agencies are required pursuant to I.C. § 10-11-2-31 and I.C. § 5-2-15-3 to submit Indiana State Police Methamphetamine Laboratory Occurrence Reports (“Occurrence Reports”) to the CJI so that the agency can create a list containing addresses of methamphetamine labs. I.C. § 5-2-6-3(13) sets forth that the duties of CJI include, “[e]stablish, maintain, and operate, subject to specific appropriation by the general assembly, a website containing a list of properties (as defined in I.C. 5-2-6-19(b)) that have been used as the site of a methamphetamine laboratory.” As you noted in your formal complaint, CJI has provided that it does not maintain such a database as the project has not been specifically appropriated by the General Assembly.

While the Department does not maintain a list of addresses, it does maintain records consisting of the number of labs found within the State and the region those labs are located as required by I.C. § 10-11-2-31 and I.C. § 5-2-15-3. This information was provided to you on March 13, 2013. Further, the Occurrence Reports maintained by the Department contain information on methamphetamine labs, including addresses. However, the Occurrence Reports do not contain a “list of addresses” as you have requested. The APRA does not require an agency to create a record in response to a request. Mr. Hoffeditz advised that records of methamphetamine labs entered into IMIS are considered investigatory records of a law enforcement agency and the Department would exercise its discretion pursuant to I.C. § 5-14-3-4(b)(1) to deny the request. The only other records maintained by the Department that have not been previously provided that would contain information partially responsive to your request would be the Occurrence Reports. The Department would, as it has in the past, comply with any proper request submitted under the APRA for copies of the Occurrence Reports.

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).

If a public agency has no record responsive to a public records request, the agency generally does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public

records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy...”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. See *Opinion of the Public Access Counselor 10-FC-56*. Here you have requested from the Department a “list of addresses of found methamphetamine laboratories in the State.” The Department has advised that it does not maintain, in list format, records that would be responsive to your request, either in the IMIS or any other database or record. Thus, it is my opinion that the Department did not violate the APRA by failing to create a record in response to your request.

However, the Department has advised that the information you are seeking (e.g. addresses of found methamphetamine labs), although not maintained in list format, can be found in the Occurrence Reports. The Department has advised that it would, as it has in the past, comply with any proper request submitted under the APRA for copies of the Occurrence Reports. As such, I would encourage you to submit a request for copies of the Occurrence Reports for the specific county and year pertinent to your request. While the Department is not required to create a list in response to your request, upon receiving copies of the Occurrence Reports, you then would be able to create a list from the information that is provided.

As to any investigatory records maintained by the Department, an investigatory record is defined as “information compiled in the course of the investigation of a crime.” See I.C. § 5-14-3-2(h). The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose its investigatory records in response to a request. 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 investigatory records exception affords law enforcement agencies broad discretion in withholding such records. See *Opinion of the Public Access Counselor 09-FC-157*. The Department would not violate the APRA by denying your request for investigatory records pursuant to I.C. § 5-14-3-4(b)(1) from an investigation that was closed or no longer considered active. However, a law enforcement agency is required to make certain records available for inspection and copying, amongst which would include a daily log of suspected crimes, accidents, and complaints. See I.C. § 5-14-3-5(c). If the incident involves an alleged crime or infraction, the agency must provide the time, date, and location of the occurrence. See I.C. § 5-14-3-5(c)(3)(A).

Please let me know if I can be of any further assistance.

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: Cpt. Dave Bursten