

August 27, 2004

Ms. Tammy Cornett
209 Paulette
P.O. Box 645
Gaston, IN 47342

Re: Advisory Opinion 04-FC-127; Alleged Violation of Access to Public Records Act by the Gaston Police Department

Dear Ms. Cornett:

This is in response to your formal complaint alleging that the Gaston Police Department (“Department”) violated the Access to Public Records Act (“APRA”), I.C. §5-14-3. Specifically, you allege that the Department failed to provide to you documents you requested and failed to respond to your requests in a timely manner. Officer Oliver responded on behalf of the Department, a copy of which is enclosed for your reference. I find that the response to your records request was timely, but that to the extent that Officer Oliver failed to reference the exception under which the statements of Mr. Davis and Mr. Shell would be withheld, his written response violated the Access to Public Records Act.

BACKGROUND

According to your complaint, on July 25, 2004, you contacted Officer James Oliver of the Gaston Police Department to ask for copies of records related to an alleged battery, which occurred on July 24, 2004 against Meranda Cornett. During that telephone call, Officer Oliver advised you that you could not have the record requested as the records were not complete. On July 26, 2004, you presented, in person, a written request for the same records. Officer Oliver states that a written response to your request was “in the mail as of the evening of July 26, 2004.” You allege that on July 27, 2004, Officer Oliver called you and advised you that you would not be allowed access to statements given by Cory Davis and Anthony Shell because they are not public records, but that the remainder of the records and photographs requested would be provided to you. On July 28, 2004, you picked up all documents requested except Mr. Davis and Mr. Shell’s statement and the photos. The photographs related to the alleged battery were mailed to you approximately one to two weeks later.

On July 28, 2004, we received your formal complaint and forwarded a copy to the Gaston Police Department. Officer Oliver, responding on behalf of the Department, advised that he prepared a written response to your written records request and mailed that response the evening of that same day.

ANALYSIS

The public policy of the Access to Public Records Act 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." I.C. §5-14-3-1. The Department is a public agency for the purposes of the Access to Public Records Act. I.C. § 5-14-3-2.

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. When a person makes a verbal request or hand-delivers a written request to a public agency, a denial occurs in one of two ways. First, a denial may occur when the person designated by the public agency as responsible for records release decisions refuses to permit inspection or copying. I.C. §5-14-3-9(a). A denial also occurs if twenty-four (24) hours elapse after the agency receives the request and there has been no response. Id. A public agency that receives a written request for public records is required to respond to that request in writing. I.C. §5-14-3-9(c)(2). If the response is a denial, the denial must include a statement of the specific exemption or exemptions authorizing the nondisclosure pursuant to I.C. §5-14-3-4. I.C. §5-14-3-9(c)(2).

According to your complaint and the information presented by Officer Oliver, the Department responded to your July 25, 2004 oral request for information that same day by advising you that the records could not be provided to you as they had not been completed. This response was timely as required by the APRA.

Officer Oliver responded to your written July 26, 2004 request for information by sending you a written response that was, according to Officer Oliver, in the mail by the evening of July 26, 2004. This denial of access to the records was also timely as required by the APRA.

We do not have a copy of the written response provided to you by Officer Oliver; however, you indicate that he told you that he would not provide Mr. Davis and Mr. Shell's statements to you. Assuming that he advised you of the same in his written response, that response should have included a statement of the specific exemption under which the records would not be disclosed. Failure to do so would constitute a violation of the Access to Public Records Act.

CONCLUSION

For the above reasons, I find that the timeliness of the Gaston Police Department's response to your request for records did not violate the Access to Public Records Act, but did violate the Access to Public Records Act to the extent that the Police Department failed to include a statement of specific exemptions under which the statements would be withheld.

Sincerely,

Karen Davis
Public Access Counselor

cc: Officer James Oliver; w/out enclosures