

March 23, 2004

Mr. Ricardo Moreno  
4114 Dearborn  
East Chicago, Indiana 46312

*Re: 04-FC-28  
Alleged violation of the Access to Public Records Act by the Indiana State Police*

Dear Mr. Moreno:

This is in response to your formal complaint alleging that the Indiana State Police (ISP) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your written request for a copy of the ISP Report concerning the October 31, 1985, death investigation of Mr. Gilberto Bonilla. A copy of the ISP's response to your complaint is enclosed for your reference. For the reasons set forth below, it is my opinion that the ISP did not violate the APRA when it denied you access to the requested record.

#### BACKGROUND

On January 28, 2004, you submitted a written request for records to the Indiana State Police. That request sought the ISP Report concerning the October 31, 1985, death investigation of Mr. Gilberto Bonilla. On February 2, 2004, the ISP responded in writing and denied you access to that record. The ISP asserted that it was withholding the record from production pursuant to Indiana Code 5-14-3-4(b)(1), which exempts disclosure of public records that are the investigatory records of law enforcement agencies. You then filed a complaint with this office alleging that the denial violated the APRA. The ISP responds that the denial was proper pursuant to Indiana Code 5-14-3-4(b)(1). The ISP notes that the responsive record, a criminal investigation report, was prepared by ISP criminal investigations personnel in the performance of their criminal investigation duties pursuant to a request by the East Chicago Police Department. While the ISP maintains its nondisclosure of the requested record,<sup>1</sup> its response to your complaint covered its standard "Indiana State Police News Information Form," completed in compliance with Indiana Code 5-14-3-5 and including the mandatory disclosures regarding the

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<sup>1</sup> In separate telephone conversations with this office, Major Anthony Sommer and Major Jerome Ezell, advised the undersigned that ISP regularly exercises its discretion to maintain its criminal investigation reports as confidential pursuant to Indiana Code 5-14-3-4(b)(1).

Bonilla investigation as required by that statute. The ISP copied you with this document when it responded to the complaint, and thereafter sent you this document under separate cover.

### ANALYSIS

Indiana Code 5-14-3-4(b)(1) provides that “[i]nvestigatory records of law enforcement agencies” shall be excepted from the disclosure requirements of the APRA at the discretion of the public agency. An “investigatory record” means “information compiled in the course of the investigation of a crime.” IC 5-14-3-2. There is no requirement that the investigation be pending or closed; all investigatory records of the law enforcement agency may be exempted from disclosure under this provision at the discretion of the law enforcement agency.

The ISP avers that the responsive record in this matter is a criminal investigation report prepared by its criminal investigations personnel in an investigation of the death of Mr. Bonilla and at the request of the East Chicago Police Department. This averment meets the ISP’s burden of establishing the content of the document with adequate specificity to demonstrate that it is a record that was compiled by a law enforcement agency in the investigation of a crime, and as such falls within the investigatory records exemption codified at Indiana Code 5-14-3-4(b)(1). Moreover, there is no evidence or even allegation that the ISP is exercising its discretion to withhold the requested record in a manner that is arbitrary and capricious. Indeed, the ISP avers -- and a review of the prior opinions of this office demonstrates -- that the ISP routinely exercises its discretion to withhold its investigatory records. Accordingly, I find that the ISP did not violate the APRA when it denied access to the criminal investigation report at issue here.

That said, Indiana Code 5-14-3-5 requires that the law enforcement agency provide certain information regarding its investigations to the public, and it cannot rely on the investigatory records exemption to avoid the mandatory disclosures of that statute. Specifically, a law enforcement agency must provide (1) the time, substance and location of a complaint or request for assistance; (2) the time and nature of the agency’s response; and (3) if the incident involves an alleged crime, information regarding the time, date and location of the occurrence, information regarding the victim, the factual circumstances surrounding the incident, and a general description of any injuries, property, or weapons involved. IC 5-14-3-5(c). Here, the ISP provided you with the required disclosures.

### CONCLUSION

For the reasons set forth above, I find that the ISP did not violate the APRA when it denied your request for access to the ISP Report.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Anthony Sommer, Indiana State Police  
Jerome L. Ezell, Indiana State Police