

August 10, 2007

Dorothy Snyder
236 East Pendle Street
Roseland, Indiana 46637

Re: Formal Complaint 07-FC-203; Alleged Violation of the Access to Public Records Act by the South Bend Police Department

Dear Ms. Snyder:

This is in response to your formal complaint alleging the South Bend Police Department (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to public records. A copy of the Department’s response is included for your reference. I find that the Department violated the APRA by requiring you to disclose why you sought the requested information and by refusing to provide the record unless you appeared in person.

BACKGROUND

You filed a complaint on July 11, 2007, alleging the Department violated the APRA by denying access to information you requested by phone on July 10. Specifically, you allege you telephoned the Department and asked for a case number for a police report written by the Department on September 28, 2006. The clerk asked your name, and when you told her she asked with whom you were affiliated. She further asked why you wanted to know the information. She indicated that she could not provide the information unless she knew how you were “connected.” You then spoke to Lt. Jeff Forizs, who indicated he would not provide the information unless you came to the Department.

The Department submitted a response on July 13, indicating the following: “Information is not accessible over the telephone & must be obtained in person at the South Bend Police Records Dept. during business hours. Thank you for your inquiry in this matter. Records Division.”

ANALYSIS

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

The Department is clearly a public agency for the purposes of the APRA. I.C. §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 non-disclosable under the APRA. I.C. §5-14-3-3(a).

A request for inspection or copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No requests may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. I.C. §5-14-3-3(a)

Here the Department indicated the information you requested would not be available to you unless you personally appeared at the office to request the information. Nothing in the APRA allows a public agency to require appearance in person to access a record. However, nothing in the APRA requires the public agency to provide information over the telephone pursuant to a request. Under the APRA, the public agency shall either provide the requested copies or allow the person to make copies on the agency’s equipment or on the requestor’s equipment. I.C. §5-14-3-3(b).

It is my opinion that the Department may require your request to be in writing and may refuse to provide information via the telephone but may not require you to appear personally to receive the information. The Department must provide a copy of the requested record if it has reasonable access to a copy machine and if the record is not excepted from disclosure under the APRA. I.C. §5-14-3-3(b); I.C. §5-14-3-8(e).

Pursuant to I.C. §5-14-3-3(a), the Department cannot deny your request because you do not state the purpose of the request absent another statute requiring you to state your purpose. The Department has not alleged there is another governing statute requiring you to do so. As such, it is my opinion the Department violated the APRA by denying your request because you would not state the purpose for your request.

CONCLUSION

For the foregoing reasons, I find that the South Bend Police Department violated the APRA by requiring you to disclose why you sought the requested information and by refusing to provide the record unless you appeared in person.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive, flowing style.

Heather Willis Neal
Public Access Counselor

cc: Lt. Jeff Forizs, South Bend Police Department