

November 18, 2004

Mr. Chester L. Wilms, Jr., #943594
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 04-FC-195; Alleged Violation of the Access to Public Records Act by the City of Fort Wayne

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the City of Fort Wayne (“City”) violated the Access to Public Records Act (“APRA”) by denying you access to public records. For the foregoing reasons, I find that the City of Fort Wayne did not violate the Access to Public Records Act.

BACKGROUND

You submitted to Mayor Richard Graham of the City of Fort Wayne a request for access to public records, which was received by the City on October 4, 2004. Your request appears to relate to law enforcement records that would be maintained by the City Police Department, because you seem to be seeking records relating to statements of a city police detective Miguel Rivera. In any case, you cite Cause Number 02D04-9709-CF-527A as the case for which you are seeking these records. Ms. Carol T. Smith, Associate City Attorney, responded to your request on October 7th. Ms. Smith advised you that your request was unclear, but that if you were requesting information related to your criminal case, those records are considered investigatory records of a law enforcement agency, and are “not a public record based on IC 5-14-3-4(b)(1).” You submitted a formal complaint, which was received by this office on October 19, 2004. I forwarded a copy of your complaint to the City of Fort Wayne. Ms. Smith responded, and I enclose a copy for your reference.

In her response to your complaint, Ms. Smith states that your request was difficult to comprehend, but she advised you that the information she believed you were requesting is an investigatory record and therefore may be withheld pursuant to IC 5-14-3-4(b)(1).

ANALYSIS

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency, unless those records are confidential or otherwise nondisclosable under Ind. Code §5-14-3-4. IC 5-14-3-3(a). The City of Fort Wayne is a public agency for purposes of the Access to Public Records Act. IC 5-14-3-2. When a request for access to public records is submitted to an agency via U.S. Mail, the agency must respond to that request within seven (7) days of its receipt of that request. If an agency denies access to a public record on the basis that the record is confidential or otherwise nondisclosable at the discretion of the agency, the denial must include a reference to the specific exemption authorizing the withholding of all or part of the record, and must also include the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c)(2).

Ms. Smith advises you that if you are seeking information relating to your criminal case, those records are investigatory records of a law enforcement agency pursuant to IC 5-14-3-4(b)(1), and therefore will not be disclosed. She appears to be speaking for the City's police department, and it would clearly be that unit of city government that would have the type of record that you are seeking. Indiana Code section 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over the disclosure of investigatory records. Therefore, the City's failure to provide investigatory records of its law enforcement agency is not a violation of the Access to Public Records Act.

A public records requests must be stated with "reasonable particularity" so that the public agency can determine what records are being sought and can locate the public records in question. IC 5-14-3-3(a)(1). If a request is not reasonably particular, the public agency may ask for clarification.

I have carefully reviewed your request for records, and I agree that it is difficult to ascertain what record or records you are requesting. Ms. Smith advised you of her interpretation of your request, and her interpretation that you are seeking a record that would be part of the investigatory file is not an unreasonable one. If in fact you believe the City has misinterpreted your request, it would be wise for you to reframe or refine your request and send another request to the City or its police department. In particular, if you are asking for information that would be in the police log required to be maintained under IC 5-14-3-5(c), you should specify the incident (by date and location of the incident) and send your request to the Fort Wayne police department. A record of statements made by a detective concerning the presence of other officers at the scene of a narcotics investigation would not generally be part of the police log required to be maintained and disclosed upon request under IC 5-14-3-5(c). However, the police are required to maintain information in its log regarding "the time and nature of the agency's response to all complaints or requests for assistance." IC 5-14-3-5(c)(2). Perhaps you may wish to specifically request this latter information.

CONCLUSION

In my opinion, the Mayor of Fort Wayne did not violate the Access to Public Records Act by denying you a record of the police department, for the reasons stated above.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Carol T. Smith