



# STATE OF INDIANA

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September 30, 2005

Michael R. Jent  
DOC # 973821  
Wabash Valley Correctional Facility  
P.O. Box 2222  
Carlisle, IN 47838

*Re: Formal Complaint 05-FC-180; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department*

Dear Mr. Jent:

This is in response to your formal complaint alleging that the Fort Wayne Police Department ("Department") violated the Access to Public Records Act ("APRA") by denying your request for access to public records.

### BACKGROUND

On August 11, 2005 you made a request for public records to the Fort Wayne Police Department. You requested reports of child abductions and/or child molestations that occurred from February 1999 to the present. You also requested "any and all reports made from or against Brenda Haney."

On August 17, 2005 Ms. Carol Taylor, Associate City Attorney, responded to your request in writing. Ms. Taylor indicated that your request was being denied pursuant to IC 5-14-3-4(b)(1). Ms. Taylor responded to your formal complaint by letter dated September 6, 2005. A copy of that letter is enclosed for your reference. Ms. Taylor indicated that the reports that you requested are investigatory records of a law enforcement agency and are therefore nondisclosable at the agency's discretion, pursuant to IC 5-14-3-4(b)(1). It is the Department's position that the requested reports involve information gathered in the investigation of a crime and are, therefore, investigatory records. The Department also asserted that records involving crimes against minors are confidential under state statute.

### 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." Ind. Code §5-14-3-1. The Department is a public agency for the purposes of the APRA. IC 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 nondisclosable under IC 5-14-3-4. IC 5-14-3-3(a).

The Department responded that reports of child abductions and/or child molestations are investigatory records, which the Department declines to disclose. The Department also asserted that any police reports or complaints regarding Brenda Haney are investigatory records. One of the exceptions to disclosure, IC 5-14-3-4(b)(1), provides that a law enforcement agency has discretion over whether or not to disclose its investigatory records. Investigatory records are defined as “information compiled in the course of the investigation of a crime.” IC 5-14-3-2(h). A crime is defined as a misdemeanor or a felony. IC 35-41-1-6. The Department has discretion over the disclosure of its investigatory records, and may either disclose or not disclose these public records in response to a public records request under the APRA. However, IC 5-14-3-4(b)(1) explicitly excepts from the “investigatory record” exception certain law enforcement records that must be made available under IC 5-14-3-5. Further, nothing contained in IC 5-14-3-4(b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency. IC 5-14-3-4(c). IC 5-14-3-5 is a statute requiring a public record to be made available for inspection and copying.

Under IC 5-14-3-5, law enforcement agencies must disclose upon request certain information regarding persons arrested or summoned for an offense, persons received in a jail or lockup, and information in a daily log or record that lists suspected crimes, accidents, or complaints. IC 5-14-3-5.

Pursuant to IC 5-14-3-4(b)(1) and IC 5-14-3-5 the Department was required to disclose information contained in its investigatory records that is required to be made available under IC 5-14-3-5. Most relevant to your request for reports of child abductions and child molestations that occurred from February 1999 to present would be information contained in the daily log that is required to be created and disclosed. IC 5-14-3-5(c).

Law enforcement agencies are required to maintain and make available for inspection and copying a daily log or record that lists suspected crimes, accidents, or complaints. IC 5-14-3-5. The daily log or record must include the following:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency’s response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
  - (A) the time, date, and location of occurrence;
  - (B) the name and age of any victim, unless the victim is a victim of a crime under Indiana Code 35-42-4;
  - (C) the factual circumstances surrounding the incident; and
  - (D) a general description of any injuries, property, or weapons involved.

IC 5-14-3-5(c).

Although the Department has the duty to provide you with records pursuant to IC 5-14-3-5(c), the agency may not be able to identify the specific records you seek based on the type of complaint or request for assistance, such as “child abductions.” When a public records request is made, the requestor must state his or her request with reasonable particularity. IC 5-14-3-3(a)(1). The Department is not required to research all records in the daily log to determine those that involve child abductions or child molestations unless it maintains those records by those categories. Therefore, if the Department would be unable to locate the records based upon the information provided by you it may seek to limit or clarify your request. When seeking clarification the agency should indicate to you how the records are filed and tell you what search parameters you could provide that would assist the agency in locating the records you seek.

Finally, the Department is correct in its assertion that IC 5-14-3-4(a)(1) exempts from disclosure those records declared confidential by state statute; however, the Department must cite to the applicable state statute that declares the records confidential. The Department has asserted in its complaint response that records involving crimes against minors are confidential, but has not supplied the specific statute exempting those records. With respect to information in a daily log regarding crimes, the APRA exempts the name and age of the victim if the victim is a victim of a crime under IC 35-42-4. IC 5-14-3-5(c)(3)(B). If the records responsive to your request are crimes under IC 35-42-4, the Department may not disclose the name and age of the victim, but would be required to disclose the remainder of the daily log regarding a crime under IC 35-42-4, unless state statute makes the other information confidential. Again, the Department, if asserting confidentiality, must cite the state statute providing protection to the record.

#### CONCLUSION

For the foregoing reasons, I find that the Fort Wayne Police Department violated the Access to Public Records Act when it denied you a record under IC 5-14-3-5 without citing a valid reason for the denial.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Carol Taylor, Esq.