

January 6, 2006

Willie R. Lee
#860862
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-251; Alleged Violation of the Access to Public Records Act by the Richmond Police Department

Dear Mr. Lee:

This is in response to your formal complaint alleging that the Richmond Police Department (“Department”) violated the Access to Public Records Act by failing to timely respond to your request for personnel records. I find that the Richmond Police Department violated the Access to Public Records Act by failing to respond timely to your request.

BACKGROUND

On November 17, 2005, you mailed to the Department a request for records, which I paraphrase as:

“A complete criminal history of Officer Mike Wamsley including any and all allegations against Officer Wamsley, all disciplinary actions taken against Officer Wamsley, and any disciplinary hearings that Officer Wamsley was a part of.”

You claim that you did not receive a timely response to your request for records. You enclosed with your formal complaint a copy of the November 29 letter from Chief Kris J. Wolski of the Department. In his response, Chief Wolski stated that, to his knowledge, former Officer Wamsley has no criminal record. He also claimed that the other information you seek is exempted from disclosure under IC 5-14-3-4(b)(8), which provision he copied to you in his letter.

I sent a copy of your complaint to Chief Wolski. He replied by letter, a copy of which is enclosed for your reference. Chief Wolski explained that your request for the record was postmarked November 18, 2005, while the Chief was out of the office. When he returned on November 28, he reviewed your letter and sent his response on November 29, 2005. He reiterated that the disciplinary records you requested are exempt under the personnel file exemption, IC 5-14-3-4(b)(8). He also stated that an identical request of the same date to the Department's internal investigator was not acted upon because the investigator is not authorized to release personnel files without Chief Wolski's consent.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record via U.S. Mail, the public agency is required to respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). The public agency that denies a written request for a record must deny the record in a writing that contains the exemption or exemptions authorizing the agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

As Chief Wolski concedes, he did not issue a responsive letter until 11 days after receiving your request. This exceeded the seven days within which a response was required to be issued, and constituted a denial of access in violation of the Access to Public Records Act. Because the law requires that the *public agency* respond to a request in the specific timeframe, it is of no moment that Chief Wolski himself was out of the office. In Chief Wolski's absence, other staff should have undertaken a timely response to any records requests received in his absence. Because a response of the public agency may be accomplished by merely acknowledging receipt of the request and indicating how and when the agency intends to comply, it is not an excuse that the internal investigator could not release a personnel file without prior approval.

Personnel files of public employees and files of applicants for public employment may be withheld in the public agency's discretion, except for:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

IC 5-14-3-4(b)(8).

In the exemption for personnel files of present and former employees of the agency, there is an "exception within the exception." Much of a public employee's personnel file is exempt, except for the items listed in (A), (B), and (C). Those items *must* be disclosed. Hence, while Chief Wolski could have claimed that former Officer Wamsley's personnel file as a whole is exempt, he should have disclosed to you any of the information you requested that falls within

the above categories. In particular, information relating to the status of any formal charges against the employee, and the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged, were required to be disclosed, if this information was in Office Wamsley's personnel file. Hence, it was incumbent upon Chief Wolski to review the former officer's personnel file to determine whether the information you requested existed.

With respect to your request for Officer Wamsley's criminal history, this information, if in the personnel file, and if it formed the factual basis for a demotion, suspension, or discharge, would be disclosable. If criminal history was in the personnel file but did not form the basis for those disciplinary actions, the Department could cite IC 5-14-3-4(b)(8) to exempt it.

However, if the Department had information in its law enforcement records that constituted "limited criminal history" as that is defined in IC 10-13-3-11, this information would be withheld as confidential (except in limited circumstances), under IC 10-13-3-27. If Chief Wolski searched his law enforcement records and found no criminal data, he could have met the requirements of the APRA by stating that the Department maintains no record of criminal history for Officer Wamsley. If limited criminal history information existed, he could have denied you the information by citing IC 10-13-3-27.

CONCLUSION

For the foregoing reasons, the Richmond Police Department violated the Access to Public Records Act when it failed to timely respond to your request for records. Also, the Department could not claim an exemption under IC 5-14-3-4(b)(8) for any information that constituted personnel file information under IC 5-14-3-4(b)(8)(B) or (C), because that information is required to be disclosed.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chief Kris Wolski