



STATE OF INDIANA

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November 25, 2009

Mr. Paul A. Sallee
675 N. Center St.
Plainfield, IN 46168

Re: Formal Complaint 09-FC-253; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Sallee:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, my opinion is that the IMPD did not violate the APRA.

BACKGROUND

In your complaint, you allege that on or about September 22, 2009, you contacted Officer Crays of the IMPD to request a copy of his investigative report in a larceny case. You claim that Officer Crays informed you that you would need an attorney and a subpoena to obtain the information because it might contain information that should be private such as social security numbers. You sent another letter to Officer Crays on September 24, 2009, requesting a written response with the statutory authority upon which he was basing his denial. After you received no response, you filed this complaint.

My office forwarded a copy of your complaint to IMPD. The response of Samantha S. Karn, chief deputy corporation counsel and public access counselor, is enclosed for your review. Ms. Karn states that Officer Cray's supervisors informed her that Officer Crays has been on extended medical leave. Neither Officer Crays' supervisor nor anyone else in his department was aware of your request. Upon receipt of your complaint, Ms. Karn requested that the IMPD gather any and all responsive documents. I understand that you have been notified that responsive records are ready for you to pick up. Finally, Ms. Karn notes that an investigatory report was not contained within the responsive records because such report was exempt from disclosure under Indiana Code section 5-14-3-4(b)(1).

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.” I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The IMPD does not contest that it is 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 IMPD’s public records during regular business hours unless the records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

If IMPD had received your written request dated September 24, 2009, it would have had a duty under the APRA to respond within seven days of receipt. Notwithstanding that duty, an agency cannot respond to a request it did not receive. I.C. § 5-14-3-9(b). If IMPD did not receive your written request, it did not violate the APRA by not responding.

I understand that IMPD has now provided you with all responsive documents except an investigatory report, which IMPD is withholding as an investigatory record of a law enforcement agency pursuant to Indiana Code section 5-14-3-4(b)(1). The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is “information compiled in the course of the investigation of a crime.” I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations. Moreover, it does not apply only to an investigation where a crime was charged or an investigation where it was adjudicated that a crime was indeed committed. Instead, the exception applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* Based on these standards, it is my opinion that IMPD did not violate the APRA by withholding the investigatory report.

CONCLUSION

For the foregoing reasons, it is my opinion that IMPD has not violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack
Public Access Counselor

Cc: Samantha S. Karn, Office of Corporation Counsel