



STATE OF INDIANA

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July 25, 2011

Mr. Murice Upshaw
2623 Pittsburgh Street
Fort Wayne, Indiana 46806

Re: Formal Complaint 11-FC-157; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Mr. Upshaw:

This advisory opinion is in response to your formal complaint alleging the Fort Wayne Police Department ("Police Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Christine Darrah, Keeper of Records for the Police Department, responded to your complaint. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing for a copy of all reports found under Fort Wayne Police Department Control #09F170301. You state you requested the records on May 26, 2011 and the Police Department denied your request on the same date, citing the investigatory records exception for law enforcement agencies. I.C. 5-14-3-4(b)(1).

My office forwarded a copy of your complaint to the Police Department. In response, Ms. Darrah maintains the Police Department's position that the records are exempt from disclosure pursuant to the investigatory records exception for law enforcement agency. Ms. Darrah provided that Control #09F170301 is an active case that has not gone to trial and the case was also tied to another open murder investigation.

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. The Police Department 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 Police

Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, 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 the Police Department did not violate the APRA in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Police Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Christine Darrah, Fort Wayne Police Department