



STATE OF INDIANA

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February 14, 2011

Mr. James T. Bagby
3038 W. 850 S.
Bunker Hill, IN 46913-9810

Re: Formal Complaint 11-FC-27; Alleged Violation of the Access to Public Records Act by the Kokomo Police Department

Dear Mr. Bagby:

This advisory opinion is in response to your formal complaint alleging the Kokomo Police Department ("KPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. City of Kokomo Corporation Counsel Lawrence McCormack's response to your complaint is enclosed for your reference.

BACKGROUND

According to your complaint, on December 17, 2010, you sent a request to the KPD for police reports or supplemental reports concerning two incidents with a particular individual: "A.R." Mr. McCormack denied your request by citing to the investigatory records exception to the APRA. You state that you "need the records for [your] legal case" and that A.R. is your step-daughter.

My office forwarded a copy of your complaints to the KPD. In response, Mr. McCormack maintains the KPD's position that the records are exempt from disclosure pursuant to the investigatory records exception. He also claims that the records are exempt from disclosure under Ind. Code § 31-39-3-4(a) because A.R. is a juvenile.

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 KPD is clearly 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 KPD's

public records during regular business hours unless the public 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 whether a crime was even 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 the KPD did not violate the APRA by police reports and supplemental reports concerning A.R.

I recognize your argument that you need the requested records for your “legal case.” If you initiate a court action, the records might be available to you through the discovery process, but that process will be overseen by a court rather than this office. Moreover, your request was made not through discovery but through the APRA, which permits police departments such as the KPD to withhold investigatory records at their discretion. As such, the KPD’s denial did not violate the APRA.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Lawrence McCormack