



STATE OF INDIANA

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May 14, 2012

Philip G. Yeary
DOC 169399
1946 W. U.S. 40
Greencastle, Indiana 46135

Re: Formal Complaint 12-FC-95; Alleged Violation of the Access to Public Records Act by the Rising Sun Police Department

Dear Mr. Yeary:

This advisory opinion is in response to your formal complaint alleging the Rising Sun Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your formal complaint, you allege that on or about March 22, 2012, you submitted a written public records request pursuant to I.C. § 5-14-3-5 to the Department. As of April 13, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Department has failed to respond to your request in any fashion.

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." *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of

receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Department violated the APRA by failing to respond to your request within seven (7) days of its receipt.

The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. Specifically, the APRA obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. *Id.* The following information must be maintained in the daily log:

- (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 IC 35-42-4;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved. I.C. § 5-14-3-5(c).

If the Department failed to comply with the requirements of I.C. § 5-14-3-5, it is my opinion that it acted contrary to the requirements of the APRA. However, although you cited I.C. § 5-14-3-5 in your formal complaint filed with our office, from the request that was submitted to the Department, your request primarily focused on information that went beyond the requirements of the section 5 and dealt primarily with investigatory records.

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.” *See* I.C. § 5-14-3-2(h). Many of the records that you requested, beyond the requirements of section 5 of the APRA, would likely be considered investigatory. 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



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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.* To the extent that you sought investigatory records of the Department, it would not have violated the APRA by exercising its discretion and denying your request pursuant to I.C. § 5-14-3-4(b)(1).

CONCLUSION

For the foregoing reasons, it is my opinion the Department acted contrary to the requirements of the APRA by failing to respond to your request pursuant to the requirements of section 9. If the Department failed to comply with the requirements of I.C. § 5-14-3-5, it acted contrary to the APRA. To the extent that your request sought investigatory records of the Department, it is my opinion that the Department would not have violated the APRA by citing to I.C. § 5-14-3-4(b)(1) in denying your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Rising Sun Department