



STATE OF INDIANA

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September 29, 2014

Mr. Brian Culp
60 S. Jefferson St.
Martinsville, IN 46151

Re: Formal Complaint 14-FC-214; Alleged Violation of the Access to Public Records Act ("APRA") by the Morgan County Sheriff's Department

Dear Mr. Culp,

This advisory opinion is in response to your formal complaint alleging the Morgan County Sheriff's Department ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Sheriff Robert J. Downey's response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 17, 2014.

BACKGROUND

Your complaint dated September 17, 2014, alleges the Morgan County Sheriff violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about September 12, 2014, you submitted a public records request to the Sheriff seeking documents related to a police action shooting which took place on September 5, 2014. On September 15, 2014, the Sheriff responded acknowledging your request indicating he did not have any records responsive to your request and that the incident is under investigation by the Indiana State Police. The Sheriff responded to your formal complaint in the same manner. The piece of information at controversy is the name of a victim of a police action shooting.

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 Ind. Code § 5-14-3-1. The Morgan County Sheriff's Department is a public agency for the

purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Sheriff's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Ind. Code § 5-14-3-5 states:

- (a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:
 - (1) Information that identifies the person including the person's name, age, and address.
 - (2) Information concerning any charges on which the arrest or summons is based.
 - (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
 - (A) time and location of the arrest or the issuance of the summons;
 - (B) investigating or arresting officer (other than an undercover officer or agent); and
 - (C) investigating or arresting law enforcement agency.
- (b) If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying:
 - (1) Information that identifies the person including the person's name, age, and address.
 - (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.
 - (3) The time and date that the person was received and the time and date of the person's discharge or transfer.
 - (4) The amount of the person's bail or bond, if it has been fixed.
- (c) An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:
 - (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 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

The Sheriff has provided documentation in the form of a “media report” and an “incident table”. These types of documentation are often acceptable for documenting the information required in Ind. Code § 5-14-3-5(c).

I have had several conversations with both the Sheriff and the Indiana State Police (“ISP”) since this issue first came about. It is my understanding there was a victim of a police action shooting during the incident in which there was an exchange of gunfire. The victim was subsequently treated for the gunshot. Although not explicitly stated, there can be little doubt that an individual discharging a firearm at police was not arrested and taken into custody.

It should be noted this Office has no interest in compromising the integrity of a law enforcement investigation, however, the Indiana Legislature has made it clear what kinds of information is available to the public even during an ongoing information. The name of the victim of the shooting (even though he may be a suspect) would fall under Ind. Code § 5-14-3-5 as disclosable information when taken into custody.

Sheriff Downey seems to be genuine in his concern for disclosing information which may affect the State Police investigation, as they are the lead investigating agency. However, his department was one of the responding agencies and is responsible for maintaining a log with this information. I understand his deference to ISP in this situation, but the law does not distinguish between lead and assisting agencies when maintaining and disclosing the log. It is my Opinion the name of the shooting victim should have been disclosed upon request.

CONCLUSION

It is the Opinion of the Public Access Counselor the Morgan County Sheriff’s Department violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Sheriff Robert J. Downey