



STATE OF INDIANA

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May 4, 2016

Ms. Kim Kilbride
225 West Colfax Avenue
South Bend, Indiana 46626

Re: Formal Complaint 16-FC-64; Alleged Violation of the Access to Public Records Act by the Mishawaka Police Department

Dear Ms. Kilbride:

This advisory opinion is in response to your formal complaint alleging the Mishawaka Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Department has responded via Mr. Geoffrey Spiess, Esq., Corporation Counsel. His 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 March 21, 2016.

BACKGROUND

Your complaint dated March 15, 2016, alleges the Mishawaka City Police Department violated the Access to Public Records Act by improperly denying your records request.

You requested police logs and records related to an incident in which a student left a Mishawaka elementary school unattended. When you attempted to obtain the full record, you were told you could not have an un-redacted copy. You contend no statutory justification was given.

On April 4, 2016 the Department responded via Corporation Counsel. The Department notes the incident is not required to be in the daily log, because it does not fit the listing in Ind. Code § 5-14-3-5(c). Also, the Department contends the refusal to provide an un-redacted copy is not an innocent violation of the APRA, because the assistant chief wished to verify he could release the full records.

DISCUSSION

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 Mishawaka Police 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 Department's disclosable 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 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.

Pursuant to Ind. Code § 5-14-3-5(c) a law enforcement 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.

Emphasis added.

Pursuant to the report provided, the Mishawaka Police Department was clearly assisting Hums Elementary School in an official capacity. Therefore a daily log is required to be generated. A log can take many forms, not the least of which is an incident report. So long as it contains the information in subsection (c), a report can substitute for the log. It appears as if this was done, however, the Department should be mindful that mere requests for assistance necessitate documentation for public inspection.

Because this incident did not involve an alleged crime or infraction, subsection (3) would not apply in this case. Therefore, the log or report would not have to contain the name of a victim for public inspection because there is no victim in this factual circumstance. An allegation is a condition precedent

to public inspection of a victim's name.¹ If there was an allegation, the Department should take note there is no expectation of privacy for a victim unless the alleged crime is under IC 35-42-4 or IC 35-42-3.5. In the instant case, however, the Department was justified in exercising its discretion under the circumstances.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the City of Mishawaka has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Geoffrey Spiess, Corporation Counsel

¹ Parties should note that I erroneously interpreted this portion of the statute during a telephone conversation with Ms. Kilbride on or about the time of the request. I sincerely apologize for any confusion this may have caused.