



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 31, 2009

Douglas Brown
416 South Harrison Street
Shelbyville, Indiana 46176

Re: Formal Complaint 09-FC-157; Alleged Violation of the Access to Public Records Act by the City of Greensburg

Dear Mr. Brown:

This advisory opinion is in response to your formal complaint alleging the City of Greensburg ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the City's response to the complaint is enclosed for your reference. It is my opinion the City has not violated the APRA.

BACKGROUND

You allege that on July 6, 2009 your client made a verbal request for access to a public record maintained by the City. Specifically, he sought a copy of a specific police report from July 5. You allege the City indicated a copy would be provided at a July 8 meeting. At the July 8 meeting, you were told the request must be made in writing. You prepared a written request and submitted it on July 8. You received a written response dated July 9, wherein the City indicated the records you requested may be excepted from disclosure based on I.C. § 5-14-3-4(b)(1). Further, the City indicated it would need to review the records and would complete the review within thirty days. You filed the present complaint on July 10, 2009, alleging you have been denied access to the record(s).

The City responded to the complaint by letter dated July 27 from attorney Timothy Coriden. The City contends that Mr. Coriden telephoned my office and asked whether thirty days was a reasonable period by which to review the request; my office indicated it was reasonable. Contrary to your claim that the prosecutor's office indicated there was no ongoing investigation, the City contends the prosecutor has indicated the matter is "under review." Finally, the City indicates that in a July 24 conference with you, the City agreed to provide a report that is required by I.C. § 5-14-3-5.

ANALYSIS

The public policy of the APRA states, "(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 City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the City 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).

A request for access to records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). An agency may require that a request be submitted in writing. I.C. § 5-14-3-3(a)(2). If the request is delivered in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here the request was initially made orally, and the City indicated the request must be submitted in writing. Pursuant to I.C. § 5-14-3-3(a)(2), the City may require a request to be made in writing. The written request was delivered in person on July 8, and the response was sent on July 9. This is within the twenty-four hours allowed in the statute, and as such the response was timely. I.C. § 5-14-3-9(a). While nothing in the statute indicates when a record must be produced in response to a request, this office has indicated that records must be produced within a reasonable period of time. There is no bright line definition as to what is reasonable, but in a situation where an agency must review a record and the statutory exceptions to determine whether it may, must, or must not disclose a record, thirty days is a typical time period. In my opinion, thirty days is not an unreasonable amount of time to review the request at issue here.

There is a reference to the City's reliance on I.C. § 5-14-3-4(b)(1), the investigatory records exception, as it relates to the requested records. Indeed this exceptions provides that an agency has the discretion to disclose or not disclose the investigatory records of law enforcement agencies. 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. It does not apply only to an investigation where a crime was charged or an investigation where it was adjudicated that a crime was indeed 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 when an investigation is long completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding from disclosure those records. 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).

In some law enforcement agencies, though, a daily log of suspected crimes, incidents, or complaints is not maintained as a separate record. Regarding a daily log, the APRA requires the following:

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;
 - (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.

I.C. § 5-14-3-5(c).

If an agency does not maintain a separate daily log, the agency must produce some record that contains the information required by I.C. § 5-14-3-5(c) to be disclosed. In some jurisdictions, the law enforcement agency will provide a copy of a police report or incident report if the agency does not maintain a daily log. The agency is only required to provide the information listed in I.C. § 5-14-3-5(c), though, and as such may redact the remainder of the information contained on the report if it was indeed compiled during the course of the investigation of a crime or is nondisclosable pursuant to another

exception. If you have requested the daily log information regarding the incident at issue, the City would be required to provide the relevant portion of the daily log or, if no daily log is maintained as a separate record, the portions of the incident report reflecting the information required by I.C. § 5-14-3-5(c) to be provided. I understand from the response provided by the City that the City has now done so.

CONCLUSION

For the foregoing reasons, it is my opinion the City has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Timothy Coriden
Mayor Gary Herbert