

January 17, 2008

Officer Glenn Talbot
Frankfort Police Department

Via electronic mail to Talbot_way@msn.com

Dear Officer Talbot:

This is in response to your informal inquiry dated November 20, 2007. I apologize for the delay in the response. Upon my appointment by Governor Daniels effective July 1, 2007, I found a backlog of informal inquiries. I am currently endeavoring to address those inquiries and issue an opinion in each matter pursuant to Indiana Code §5-14-4-10(5).

BACKGROUND

In your inquiry, you ask whether the Access to Public Records Act ("APRA")(Ind. Code 5-14-3) allows a law enforcement agency to release to school officials the names of juveniles involved in a crime.

You indicate you are a patrol officer with the Frankfort Police Department ("Department"). You were involved in the investigation of a case of alleged underage drinking. Two juvenile males were arrested and one juvenile female was taken to Indianapolis for medical treatment related to intoxication. You further indicate the school resource officer for the Department provided the names of the juveniles and other information to a school official via telephone. When you confronted the officer, he claimed he was allowed to release the information based on the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C.A. Sec. 1232g et seq. You indicate that after researching FERPA, you found no provision allowing a law enforcement agency to provide information regarding a juvenile criminal case to school officials. You also cite Indiana Code 5-2-4-7, which declares the disclosure of criminal intelligence information unlawful.

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

Frankfort Police Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. As such, the records of the Department shall be disclosed upon request unless the records are excepted from disclosure under section 4 of the APRA. I.C. §5-14-3-3.

The APRA provides that records declared confidential by state or federal statute may not be disclosed by a public agency. I.C. §5-14-3-4(a). You contend I.C. §5-2-4-7 prohibits law enforcement officers from disclosing certain information of a crime to any agency besides a criminal justice agency. However, the officer who disclosed information in this matter claimed the FERPA allows him to release such information to a school official.

The FERPA was established in 1974 to protect the privacy of education records of students in public schools. The FERPA allows schools to release education records to state and local authorities within a juvenile justice system, pursuant to the specific state law. Need statutory reference in FERPA rather than DOE website reference. *United States Department of Education website, <http://www.ed.gov/policy/gen/guide/fpco/ferpa/index.html>.*

The FERPA does not address the release of information from a law enforcement agency to a school official. However, a recent amendment to I.C. §31-37-4-3 by Public Law 67-2007 requires a law enforcement office to notify the chief administrative officer of a public or nonpublic school when a student is arrested for certain crimes. The statute lists 26 crimes, including controlled substances offenses under I.C. 35-48. I.C. §31-37-4-3(a)(25). The law enforcement agency must notify the school official with 48 hours after the student has been taken into custody. I.C. §31-37-4-3(c). If the students in your case were taken into custody because of the acts listed in I.C. §31-37-4-3(a), the officer was required to provide the information to the school official.

The General Counsel of the Indiana Department of Education provided me with a copy of the department's School Safety Legislation 2007 brochure. I have included it with this opinion. Public Law 67-2007 is addressed on pages 12 and 13. This document may be helpful in future situations.

CONCLUSION

The FERPA does not allow for the release of information from law enforcement agencies to school officials, but Indiana law (See I.C. §31-37-4-3) requires law enforcement agencies to provide school officials with information about students when they are involved in certain crimes.

Best Regards,



Heather Willis Neal
Public Access Counselor