



STATE OF INDIANA

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November 23, 2010

Mr. Douglas E. Sakaguchi
53600 N. Ironwood Dr.
South Bend, IN 46635

Re: Formal Complaint 10-FC-262; Alleged Violation of the Access to Public Records Act by the Elkhart Police Department

Dear Mr. Sakaguchi:

This advisory opinion is in response to your formal complaint alleging the Elkhart Police Department (the "EPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The EPD's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on October 5, 2010, you requested access to documents related to an incident that occurred on January 6, 2010. The EPD did not respond to that request.

My office forwarded a copy of your complaint to the EPD. City Attorney Amber Bressler responded on behalf of EPD. She states that your October 5th request was a duplicate of a request that you made on July 6, 2010. The EPD denied that request based on the investigatory records exception to the APRA, I.C. §5-14-3-4(b)(1), and the APRA's exception for medical records, I.C. §5-14-3-4(a)(3). The EPD provided you with the EPD's daily log information pursuant to section 5 of the APRA. The EPD did not respond to your October 5th request because it was an exact duplicate of your July 6th request.

ANALYSIS

The APRA requires public agencies to respond to records requests within certain timeframes. If a 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. I.C. §5-14-3-9(b). If a request is delivered in person and the agency does not respond within

24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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. However, an agency is not required to continue to respond to the same request for access to records. *See Op. of the Public Access Counselor 09-FC-211*. Consequently, if the EPD had already responded in full to your July 6th request, in my opinion it was not obligated to respond to your duplicate October 5th request.

As to the substance of your request, 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.” I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations. Moreover, 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 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.* Ms. Bressler avers that the withheld records are investigatory records of the EPD. Consequently, it is my opinion that EPD did not violate the APRA by withholding them. Moreover, the EPD did not violate the APRA by withholding medical records pursuant to subsection 4(a)(3) of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the EPD did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Amber J. Bressler