

October 23, 2000

Mr. Rick Volbrecht  
9221 Parkway Drive  
Highland, Indiana 46322

Re: *Advisory Opinion 00-FC-35 Advisory Opinion 00-FC-35; Denial of Access to Public Records by the Highland Police Department.*

Dear Mr. Volbrecht:

This is in response to your formal complaint, which was received on October 2, 2000. You have alleged that the Highland Police Department ("Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that you were improperly denied a copy of an August 14, 2000 Indiana State Police memorandum ("Memorandum,") concerning the Department's use of the Indiana Data and Communications System ("IDACS.") Mr. Rhett L. Tauber, attorney for the Department responded in writing to your complaint in a letter dated October 10, 2000. A copy of his response is enclosed for your reference. For the reasons stated below, it is my opinion that the Department's denial of access to the Memorandum did violate the APRA.

### BACKGROUND

According to information provided in your complaint, you hand-delivered a written request to the Department on September 29, 2000. In that request, you asked for a copy of the Memorandum, which was written by Indiana State Police Sergeant John Richards concerning the Department's use of IDACS. The Memorandum detailed Sergeant Richards' findings during a June 7, 2000 audit of the Department, his subsequent correspondence with members of the Department, his further investigation regarding violations by the Department, and his opinion as to the severity of action that needs to be taken against the Department.<sup>1</sup> In a letter dated September 29, 2000, Chief Paul Gard denied your request for a copy of the Memorandum claiming that it was "the property of the ISP" and that you should contact the Indiana State Police Department for a copy.

In response to your complaint, Mr. Tauber stated that he did advise Chief Gard that a copy of the Memorandum should have been disclosed to you. According to Mr. Tauber, Chief Gard has since provided you with a copy of the memorandum.

### 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." Ind. Code § 5-14-3-1. The Department is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours. Ind. Code § 5-14-3-3(a).

A public record is defined as

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code § 5-14-3-2. It is clear that the Memorandum, in the hands of the Department is a public record<sup>2</sup>. Some public records, however, are excepted from disclosure because they are confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. The burden of proof for the nondisclosure of a public record, however, is on the public agency that denied access to the record, not on the person seeking to inspect and copy the record. Ind. Code § 5-14-3-1.

In this case, Chief Gard denied you access to a copy of the memorandum because he considered it the "the property" of the ISP. Under the APRA, once the Department received a copy of the memorandum, it became a public record of the Department. It is then the burden of the public agency to state the specific exemption under the APRA that authorizes the nondisclosure of the public record. Chief Gard's denial did not state a valid statutory exception to disclosure. His response that the memorandum was the "property" of the ISP was not an appropriate denial under the APRA; if the Department had a copy, it was a public record it was to be produced unless it was either confidential or otherwise nondisclosable under the APRA. Mr. Tauber, attorney for the Department, in his response admitted that he discussed the situation with Chief Gard after the filing of your formal complaint and has since advised him that the document should have been released upon request. It is my understanding that you received a copy of this memorandum from the Department after the filing of your complaint<sup>3</sup>.

## CONCLUSION

It is my opinion that the Highland Police Department violated the Access to Public Records Act when it improperly denied your request for a copy of the Indiana State Police Department memorandum dated August 14, 2000 concerning the use of the IDACS.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Rhett Tauber, Attorney  
Highland Police Department

[1](#) Upon request Major Anthony Sommers of the ISP provided a facsimile copy of Sergeant Richards memorandum.

[2](#) The information provided to this office indicates that the Department did not get a copy of the Memorandum directly from the ISP, but from the local newspaper. Chief Gard's denial letter implies that, at the time of your request, the Department had a copy of the Memorandum. It does not matter who provided the copy to the Department; it is still a public record in their hands.

[3](#) Some of the information in the photocopy of the memorandum was redacted. Mr. Tauber indicated in his response that the redaction was made by the Indiana State Police Department. We contacted Major Anthony Sommers, staff attorney for the ISP, who confirmed that the information that was redacted was confidential criminal history information under Indiana Code § 5-2-5.

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