



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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May 11, 2015

Mark Johnson - #147275
Miami Correctional Facility
3038 West, 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 15-FC-124; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Johnson,

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* ISP has responded to your complaint via Ms. Cynthia Forbes, Esq. Her 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 April 2, 2015.

BACKGROUND

Your complaint dated April 2, 2015 alleges ISP violated the Access to Public Records Act by failing to provide the records you requested.

On March 9, 2015, you made a request to the Indianapolis Regional Laboratory, seeking all reports related to a certain cause number. On March 19, 2015, the Laboratory Manager informed you the laboratory could not locate a file pursuant to your request with the information given. He invited you to provide additional information to aid in locating the records. You filed your complaint before capitalizing on the opportunity to do so.

On April 7, 2015, ISP responded to your complaint. ISP noted the Laboratory Manager's response did not constitute a denial of your request and that he did offer to continue his search if additional information was provided. ISP notes it did inform you the information you seek may be investigatory in nature and the released information would likely be limited in scope.



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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." See Ind. Code § 5-14-3-1. The Indiana State Police 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 ISP'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).

The APRA does not require a public agency to disclose a record which does not exist. Here, it appears you provided limited information to the Laboratory preventing it from locating the records you were seeking. However, the Laboratory Manager did offer to continue searching if additional information was provided.

Further, ISP cautioned you the records may be investigatory in nature. The release of investigatory records of law enforcement agencies is discretionary pursuant to Ind. Code § 5-14-3-4(b)(9). Information provided to you may therefore be limited. ISP is correct the APRA gives broad discretion to investigatory agencies to withhold records as investigatory and even if your records were located, it would be within ISP's rights to withhold certain documents. If it is relevant to your court proceedings, the information may be obtained through a discovery device. These matters, however, are under the purview of the judiciary.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana State Police has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "L. Britt", written over a white background.

Luke H. Britt
Public Access Counselor



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Cc: Ms. Cynthia Forbes, Esq.