



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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September 24, 2015

John May - 962364
1946 W. US Hwy 40
Greencastle, IN 47135

Re: Formal Complaint 15-FC-228; Alleged Violation of the Access to Public Records Act by the Linton Police Department

Dear Mr. May,

This advisory opinion is in response to your formal complaint alleging the Linton Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded to your complaint via counsel, Ms. Kathryn Springer, 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 August 10, 2015.

BACKGROUND

Your complaint dated August 6, 2015 alleges that the Linton Police Department violated the APRA by denying you access to public records.

On July 27, you submitted a written request to the Department requesting the opportunity to inspect and have a copy of several records, including DVD interviews of individuals and pictures, associated with Cause No. 28C01-1402-FC-000012. As of the filing of this complaint, the Department has not responded nor acknowledged your request.

On August 19, the Department responded to the formal complaint through attorney Kathryn A. Springer. Ms. Springer acknowledged that the Department is a public agency and a law enforcement agency under the APRA. The Department states that the records requested are considered investigatory records under Ind. Code § 5-14-3-2(i). Therefore, counsel contends the Department is allowed to refuse disclosure under Ind. Code § 5-14-3-4(b)(1).

Ms. Springer also contends that because non-response is considered a denial, under Ind. Code § 5-14-3-4.4(c)(2), the Department actions were proper.



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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 Linton Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy the Department’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 provides that a public agency must respond to requests for access to or copies of public records. If a written request was received by the public agency by mail, as it was in this case, the agency must respond within seven (7) calendar days of receiving a request. Failure to respond constitutes a denial of access to any or all of the public records requested.

Pursuant to Ind. Code § 5-14-3-9(d), a denial of access to public records requires a response that includes the name and title of the person responsible for the nondisclosure of the records and how that person may be contacted. Additionally, when a denial occurs the required response should include the statutory authority for the claim that the record is confidential or otherwise nondisclosable.

This duty is separate from the duty to respond to a request. A public agency may combine these two duties, for example by sending one letter that acknowledges the request and simultaneously denies the request. However; a public agency cannot use its silence to meet its obligation to acknowledge a request.

Counsel has also cited the investigatory records exemption, among others. Ind. Code § 5-14-3-4(b)(1) provides broad discretion to law enforcement agencies to withhold investigatory records. Photographs and records of interviews fall within the definition of investigatory record. Therefore, the Department’s assertion of this privilege is likely valid to the extent it was never filed in court; however, they must assert the exemption in a denial to your request.



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CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Linton Police Department has violated the Access to Public Records Act by failing to acknowledge your request within the reasonable time.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", is written over a light blue horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kathryn A. Springer, Esq.