



# STATE OF INDIANA

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March 11, 2015

Mr. Eric B. Skeens #196051  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360

*Re: Formal Complaint 15-FC-37; Alleged Violation of the Access to Public Records Act by the City of Huntington Police Department*

Dear Mr. Skeens,

This advisory opinion is in response to your formal complaint alleging the City of Huntington 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, Michael Hartburg, Esq. His 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 February 5, 2015.

## **BACKGROUND**

Your complaint dated January 29, 2015 alleges the City of Huntington Police Department violated the Access to Public Records Act by denying the production records responsive to your request.

On or about January 20, 2015, you submitted a public records request to the Department seeking a copy of "any and all reports, files, records, case numbers, documents and recordings including but not limited to: notes, statements interviews, discussions, and audio/video records that pertain to me and or my Huntington" criminal court case.

The Department (via the City Clerk-Treasurer) denied your request on January 27, 2015 stating the records were not requested with reasonable particularity and the type of records sought is law enforcement investigatory records. The denial also claimed the records you sought were not "public records" under the APRA and the Huntington City Code.

## ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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 City of Huntington Police Department 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 Department’s 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).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Initially, it appears as if your complaint takes exception with the Clerk-Treasurer of the City of Huntington denying your request as opposed to the Police Department. Please be advised this Office has held on several occasions, it matters not what Department or office-holder of an executive branch responds on behalf of the municipality as a whole. As long as the designated public official complies with the APRA, transparency and access is not compromised.

Curiously, the City claims some of the documents you seek are not public records. This is not the case. The records you seek, if they exist, are public records under Ind. Code § 5-14-3-2(o) (incorrectly cited by the City as subsection (n)). They may not be *disclosable* public records, but they are public records nonetheless.

The City also argues your request was not made with reasonable particularity; however, I do not believe your request is so vague or elusive the City or Department could not identify what records for which you are searching. Most likely, you have a criminal file in the Department which would be easily found. Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information which enables the agency to search for, locate, and retrieve the records. *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012).

Furthermore, the Department states the records you seek are investigatory records of a law enforcement agency. Indiana Code § 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over the disclosure of investigatory records. It appears as if the information you request falls under the category of investigatory records if it was originally compiled in the course of an investigation of a crime.

That being said, the APRA favors disclosure and I discourage public agencies from adopting blanket policies or ordinances which instruct the discretion to withhold records is universally exercised. Discretion should be exercised judiciously.

So while the investigatory record may be invoked in this instance, I encourage the City to reevaluate whether the release of the file would compromise the integrity of any ongoing investigation.

Additionally, it also appears you are basically seeking your court file, which should be available from the court with jurisdiction over your court case.

Please do not hesitate to contact me with any questions or concerns.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Michael Hartburg, Esq.