

March 20, 2007

TO: INDIANA LAW ENFORCEMENT OFFICERS AND AGENCIES

FROM: Karen Davis
Public Access Counselor

RE: Inspection of Crash Reports

It has come to my attention that individuals who request to view crash reports are being told by Indiana law enforcement agencies that the reports are no longer available for viewing without paying a fee of \$5 or more. In other cases, law enforcement agencies have allowed individuals to view the crash reports but prohibit the person from writing down anything from the crash report without paying the fee. Finally, some persons have reported to me that law enforcement agencies insist on redacting information from a crash report prior to allowing the person to view the report.

The following guidelines must be followed by Indiana law enforcement agencies:

Crash Reports Are Not Confidential. The motor vehicle law in Indiana states that a crash report filed by a law enforcement officer is not a confidential record and shall be made available for inspection and copying under IC 5-14-3. Ind. Code 9-26-2-3.

Right to Inspect Without Cost. Under the Access to Public Records Act, a public agency may charge a fee for **copies** of its records. Ind. Code 5-14-3-8. A public agency **may not charge any fee to inspect a public record.** IC 5-14-3-8(b). Under IC 9-29-11-1, a law enforcement agency may charge a fee of at least \$5 for a *copy* of a crash report. However, this statute does not permit a law enforcement agency to charge a fee to inspect a crash report.

What Inspection Is. A person wishing to inspect a crash report has the right to make notes from the crash report and leave the office with those notes. *See* Ind. Code 5-14-3-2(g), (defining “inspect” to include manually transcribing the record and making notes.) Because the right to inspect includes making notes, and because the law enforcement agency cannot charge any fee for the right to inspect crash reports, the law enforcement agency may not charge the \$5 fee to the person who wants to make notes from the crash report.

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Removing Information From Crash Reports. Some law enforcement agencies want to remove information from crash reports. Removing a social security number is appropriate because the law makes social security numbers confidential, under Ind. Code 5-14-3-4(a)(12). However, other information on a crash report is not confidential. Names of drivers who are minors are not confidential under state law. Only where information is classified as confidential by state law may it be redacted or removed from a crash report. Removing information inappropriately is a denial of access and a violation of the Access to Public Records Act. Any question about whether to remove specific information may be directed to my office.

Draft Reports. A public record is any material that is “created, received, retained, maintained, or filed by or with a public agency.” Ind. Code 5-14-3-2(m). This includes material that is in draft form, perhaps awaiting final information prior to completion. A crash report that has not yet been approved or finalized is still a public record, and it can be denied only with statutory authority. The draft reports should be made available for inspection and copying. If the law enforcement agency is concerned that these draft reports not be confused with an official crash report, the draft report can be marked as “draft” or “unofficial.”

Time for Producing Crash Reports. The access laws do not prescribe when any record must be produced, but the Office of the Public Access Counselor has stated that records must be produced within a reasonable period of time. For most requests for recent crash reports, a person’s request should be able to be fulfilled in 2-3 days. This is a guideline and may vary depending on factors such as the temporary absence of the records officer, the number of reports requested, or other unusual circumstances.

If these guidelines are not followed, the law enforcement agency may be in violation of the Access to Public Records Act. Denial of the right to inspect the crash reports could result in risk to your agency for attorney fees, court costs, and expenses of litigation if a person sues your agency to compel disclosure of the crash reports and wins the lawsuit.

I encourage the law enforcement agency to call my office if issues or questions arise concerning this guidance.

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