



# STATE OF INDIANA

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October 21, 2016

Mr. Robert A. Gaddie - #852477  
Indianapolis Re-Entry Educational Facility  
401 North Randolph Street  
Indianapolis, Indiana 46201

*Re: Formal Complaint 16-FC-231; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Gaddie:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department (“IMPD”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. IMPD has responded via Ms. Melissa L. Coxey, Esq., Assistant Corporation Counsel. Her response is attached for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 12, 2016.

## BACKGROUND

Your complaint dated September 6, 2016, alleges the Indianapolis Metropolitan Police Department violated the Access to Public Records Act by failing to provide the documents you requested.

Your complaint states you submitted a public records request on June 17, 2016 to IMPD, requesting the recorded statements/testimonies of several named IMPD officers and civilians, including your own. You received a response to your request from IMPD Counsel on June 24, 2016, but had not received the records requested.

On August 23, 2016, you sent a second notice asking for correspondence with regard to your original request. IMPD sent correspondence informing you the individual who acknowledged your request was no longer employed with IMPD and the information was being withheld, as the documents were classified as investigatory records of a law enforcement agency.

## 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 Indiana Code § 5-14-3-1*. The Indianapolis Metropolitan Police Department is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the IMPD’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request is submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana 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.

It appears the untimeliness of a response to your request was an unintentional oversight due to staff turnover. Nevertheless, but for your follow-up correspondence on August 23, 2016, IMPD may have not responded to your original request at all. Therefore the eventual denial, while potentially legal, is untimely.

As to the denial itself, Indiana Code § 5-14-3-4(b)(1) gives law enforcement agencies the discretion to withhold or disclose investigatory records. An investigatory record is “information compiled in the course of the investigation of a crime.” *See Indiana Code § 5-14-3-2(h)*. This is not to say all records maintained by the Department are considered investigatory -it must be in the course of an investigation of a crime. *See Opinion of the Public Access Counselor 14-FC-135*.

As also stated in *Opinion of the Public Access Counselor 14-FC-13*:

The investigatory records exception is indeed one of the broader, and most liberally applied, exceptions in the APRA. I have continuously cautioned law enforcement agencies to use the exception in a light most favorable to transparency and access – all the more so when release of information would not compromise the integrity of an investigation. Indeed, there will be many instances where the disclosure of a record may jeopardize an investigation or public safety. Even investigations by law enforcement internal affairs units may ultimately result in criminal charges and therefore would fall under the exception.

IMPD has stated the original allegations contained in the original complaint included (i) excessive force; (ii) arrest without a warrant and no probable cause; and, (iii) fabricated incident report. Each of these allegations could give rise to criminal charges, therefore, it remains to be seen whether the incident is still under investigation. If it is, then the release of the documentation may compromise the ongoing investigation. If not, then IMPD would bear the burden of proving whether the withholding of the documents is arbitrary and capricious. For example, if the release of a closed-case would not jeopardize an expectation of privacy or an element of public safety, the records should be released once an investigation is closed.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indianapolis Metropolitan Police Department has violated the Access to Public Records Act in failing to timely respond to your request, but not for the actual denial of documents.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Melissa L. Coxey, Esq.