



STATE OF INDIANA

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November 3, 2016

Ms. Kristen S. Brown
918 Shorewood Court
Columbus, Indiana 47201

Re: Formal Complaint 16-FC-249; Alleged Violation of the Access to Public Records Act by the City of Columbus Police Department

Dear Ms. Brown:

This advisory opinion is in response to your formal complaint alleging the City of Columbus Police Department ("CPD") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. CPD responded via Mr. Alan Whitted, Esq. City Attorney. His 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 August 11, 2016.

BACKGROUND

Your complaint dated August 1, 2016, alleges the City of Columbus Police Department violated the Access to Public Records Act by failing to meet the requirements of keeping a daily log as mandated by Indiana Code § 5-14-3-5.

On or about September 8, 2016, you requested a copy of documentation related to an incident. You provided a case number and a date and time of the alleged incident. On September 26, 2016, you were provided an incident labeled "Public Copy". You take exception with this document claiming more information should have been provided to you, notably the factual circumstances surrounding an incident and a general description of any injuries, property or weapons involved.

In its response, the City argues you were provided with everything in which it is obligated to release under the Access to Public Records Act. Specifically, the factual circumstances and general description portion were omitted because no one was arrested or summoned pursuant to the incident.

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 City of Columbus 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 CPD’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 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 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.

In general, investigatory records of law enforcement agencies are exempt from obligatory disclosure under Indiana Code § 5-14-3-4(b)(1). This exemption protects public safety considerations as well as the integrity of ongoing investigations. There is, however, an *exception to the exception*, so to speak. Section 5 of the APRA details circumstances under which law enforcement *must* release information to the public. These details are generally administrative in nature and would not compromise the investigation itself.

Section 5 is split into three (3) categories or subsections (‘a’, ‘b’ and ‘c’) with three (3) conditions precedent. By their plain reading, these three (3) categories are mutually exclusive. Subsection (a) lists the information which must be released if a person is arrested or summoned for an offense; Subsection (b) sets for the documentation for a jailed individual.

Pursuant to Indiana Code § 5-14-3-5(c), however, a law enforcement agency shall maintain a daily log or record which lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance..
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 3542-4 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved

CPD argues that because the incident did not result in an arrest, documentation of (C) and (D) was not required. I disagree. While the first two (2) ‘conditions precedent’ are specific in nature, the third

category is a catch-all for **ALL** suspected crimes, accidents or complaints. In statutory construction terms, (a) and (b) do not modify (c)(3)(C) or (c)(3)(D). It is my opinion CPD's attorney has misapplied the statute. Any alleged crime or infraction requires documentation of the factual circumstances surrounding the incident; and a general description of any injuries, property, or weapons involved.

Nevertheless, the public copy of the incident report clearly labels two (2) alleged or suspected crimes as criminal mischief/vandalism and a domestic disturbance. A weapon was described as "other" and two (2) vehicles were listed as damaged. The terms "factual circumstances" and "general description" are not defined by statute, however, it does not appear CPD generated documentation which would satisfy either of these requirements.

Factual circumstances must be more than just a list of suspected crimes. It also need not be an overly detailed narrative which may compromise the integrity of an investigation, an expectation of privacy or jeopardize public safety. As I stated in *Informal Opinion of the Public Access Counselor 16-INF-09*:

For daily logs, Indiana Code § 5-14-3-5(c) contemplates disclosure that is enough to explain the substance of the incident, but must give the reader an idea of what happened. Indiana Code 5-14-3-4(b)(1) provides discretionary release of records to protect the integrity of the investigation. Reading these two provisions together, a daily log should contain enough information to provide the public information about the general substance of the incident, but not so much as to impair law enforcement's ability to investigate. The information disclosed would be situation-specific, but the APRA generally contemplates as much information as possible.

Therefore, it is my opinion the public copy of the incident report provided to you contained insufficient detail to meet this standard. It is my recommendation CPD review its daily log requirements with this guidance in mind. Additionally, if CPD has documented more details of the incident in question, it should be provided to you.

Please do not hesitate to contact me with any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Alan Whitted, Esq.