



STATE OF INDIANA

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November 17, 2016

Mr. Jeremy A. Nielson
2032 Meadow Lane #4
Scherverville, Indiana 46375

Re: Formal Complaint 16-FC-255; Alleged Violation of the Access to Public Records Act by the Hobart Police Department

Dear Mr. Nielson:

This advisory opinion is in response to your formal complaint alleging the Hobart Police Department ("HPD") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. Capt. Garrett Ciszewski responded. 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 October 3, 2016.

BACKGROUND

Your complaint dated September 29, 2016, alleges the Hobart Police Department violated the Access to Public Records Act by failing to provide you with a complete copy of a video recording.

On or about August 30, 2016, you requested a number of items from the HPD. Relevant to this complaint you requested video surveillance footage from the north side of the HPD station. You were provided this record, however, you contend the footage is incomplete. You re-submitted your request on September 23, 2016 for the entirety of the recording. On September 26, 2016, the HPD advised you the recording was indeed complete. HPD explained the video camera only records and stores detected motion; therefore, it was incomplete for the entire period of time you requested. You argue there was additional 'motion' during the unrecorded period of time and therefore footage must exist.

HPD responded to your formal complaint by re-iterating the entirety of the footage was provided to you.

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 Hobart

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 HPD'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)*.

Whether this footage exists is a matter of fact and not a matter of law. When there are disputes as to facts, I generally tend to opine on both sides. Based on the information provided, I cannot make a conclusive determination whether additional footage exists or even make a reasonable inference. If it does exist, it should be provided to you. However, if the camera did turn off and the recording stopped, then HPD does not have to disclose a public record which does not exist.

As for copy fees, please be advised a public agency can charge 105% of its direct cost for retrieving and producing a recording. Fifty dollars is likely not an exorbitant sum for such a copy.

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

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Garrett Ciszewski