



STATE OF INDIANA

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December 5, 2016

Mr. John D. May
6908 Old U.S. Hwy. 41
PO Box 1111
Carlisle, Indiana 46204

Re: Formal Complaint 16-FC-274; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. May:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police (“ISP”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. ISP responded on November 16, 2016 via Ms. Sarah Graham, Paralegal. Her response is included 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 18, 2016.

BACKGROUND

Your complaint alleges on September 9, 2016, you filed a formal records request for access to a total of 24 different categories of records. These included case reports, statements, laboratory materials, search warrants and various other records. You had previously submitted this request and it was subject to prior formal complaint (*Opinion of the Public Access Counselor 15-FC-256*). That request was denied on October 6, 2015, as the ISP considered the records to be ‘investigatory records’ and ISP was exercising its discretion to withhold the documents. You filed your formal complaint with the sole allegation of non-compliance as that of untimeliness. That formal opinion, dated November 9, 2015, only addressed the timeliness issue and is hereby incorporated by reference.

You now challenge the propriety of the investigatory records application a year after the fact following the resubmission of the original request. ISP again denied you on September 29, 2016. Your reasoning for the impropriety of the discretion is it is arbitrary and capricious, having been filed in court or referenced in court documents.

ISP argues in its response it maintains the discretion to withhold investigatory records and directs you to the court of record as it is the custodian of the documentation you seek.

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 Indiana State Police 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 ISP’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)*.

Unfortunately, I am unable to accept your complaint as timely. The statute of limitations for filing a complaint with my office is thirty (30) days after the denial pursuant to Indiana Code § 5-14-5-7(a)(1). Simply resurrecting an already-submitted public records request does not start the clock over. You were originally denied in 2015 and I addressed the issue based on a timeliness complaint. You would have had thirty (30) days from ISP’s original 2015 response to file a complaint. I could have addressed the issue at that time, however, it was not part of your original or any follow-up formal complaint.

That being said, in general, I agree with your presumption that something which is filed with the court loses its status as discretionary. I decline to declare the exercise of ISP’s discretion arbitrary and capricious, as that is a determination for the courts and not this office. In any case, ISP would not likely have been the entity to have filed information with the court – a prosecutor would. Therefore, I do not think ISP erred in maintaining the documentation is investigatory. In fact, the proper entity for the request is indeed the court. Additionally, I do agree with ISP there are other mechanisms in place for you to receive the documentation. Given the General Assembly has granted broad discretion to law enforcement agencies to withhold investigatory records, it stands to reason if the records are available through other means, then those avenues should be the methods of first resort.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish at the end.

Luke H. Britt
Public Access Counselor

Cc: Ms. Sarah Graham