
OPINION OF THE PUBLIC ACCESS COUNSELOR

CINDY K. MARSH,
Complainant,

v.

TOWN OF DAYTON POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
17-FC-273

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Dayton Police Department (“DPD”) violated the Access to Public Records Act¹ (“APRA”). The DPD responded to the complaint through attorney Jason Ramsland. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on December 15, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Cindy K. Marsh (“Complainant”) filed a formal complaint alleging the Town of Dayton Police Department violated the Access to Public Records Act by failing to provide surveillance video captured in the course of an investigation.

Complainant and her husband, Councilman Ron Koehler, are famously opposed to the annexation and development of a piece of property adjacent to the Town of Dayton. On Halloween night 2017, some puckish townspeople - opposed to the Marsh and Koehler perspective – placed faux facades over the “DAYTON” town signs, disguising them as “KOEHLERVILLE”. A nearby gas station had surveillance cameras in position to catch the pranksters in the act and the Town of Dayton Police Department confiscated the footage in the course of its investigation.

Complainant requested the footage under a public records requests submitted November 3, 2017. It was denied by the DPD as investigatory and the case was forwarded to the Indiana State Police. Complainant spoke with an ISP Sergeant who indicated the matter was likely not criminal in nature and more akin to a civil matter. Upon receipt of this information, Complainant again requested the video, knowing the matter would not end up being prosecuted as a crime. She was again refused.

In its response, the DPD argues the footage was compiled during the period where it could be considered criminal in nature, although the end result was not criminal prosecution.

ANALYSIS

This formal complaint presents an issue of whether the Town of Dayton's withholding of security camera footage in the course of an investigation is justified under the Access to Public Records Act.

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." Ind. Code § 5-14-3-1. The Town of Dayton Police Department is a public agency for the purposes of the APRA, and subject to its requirements. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the DPD's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

Investigatory records of law enforcement agencies may be withheld from disclosure under Indiana Code § 5-14-3-3(b)(1). While this exception is not absolute, the non-disclosure could very well extend to situations where a crime was initially investigated but were not eventually prosecuted. Even the Complainant categorizes the mischief-makers as "vandals" in her complaint. Therefore it stands to reason that the alteration of the signs was initially investigated as the crime of vandalism. It matters not if the Halloween caper was eventually dismissed as an impish stunt, the shadow of a potential crime hung over the investigation.

There are a myriad of reasons the police may choose to exercise its discretion under this statute including protecting the integrity of an investigation, the expectation of privacy and the preservation of public safety considerations. The situation in the Town of Dayton is well known to this Office. While the petty actions of some tricksters on Halloween night may seem innocuous to the outsider, it stands to reason some rabble may be roused by the release of the video in terms of potential retaliation. If, in the best judgment of law enforcement officials, this is truly a public safety threat, then the withholding of the video is neither arbitrary nor capricious.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Town of Dayton Police Department did not violate the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor