

OPINION OF THE PUBLIC ACCESS COUNSELOR

MICHAEL L. EDWARDS,
Complainant,

v.

INDIANA STATE POLICE,
Respondent.

Formal Complaint No.
20-FC-107

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana State Police violated the Access to Public Records Act.¹ ISP legal counsel Barbara L. Rosenberg filed an answer on behalf of the agency. 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 July 30, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records detailing the chain of custody for specific police property.

On July 7, 2020, Michael Edwards (“Complainant”) filed a public records request with ISP seeking the following:

Any and all, whether partially redacted, Indiana State Police property record and receipts including documents with control numbers 675202, 675203, 691191 and all subsequent documents that track custody and disposition of exhibits- 107, 180, 109, 114, 115, 600 (Case No. 34-25361).

On July 16, 2020, ISP denied Edwards’ request, asserting that the requested records were evidence collected in a case; and thus, were excepted from disclosure under the Access to Public Records Act’s investigatory records exception.

Edwards filed a formal complaint with this office on July 30, 2020. Edwards argues that ISP incorrectly interpreted his request because he only requested documents that would show where the items are, if they have been released, or destroyed (i.e., simple administrative actions).

On August 18, 2020, ISP filed a response to Edwards’ complaint denying the agency violated the APRA. ISP reiterated that the investigatory records exception gives the agency the discretion to withhold investigatory records from disclosure, which are defined as information compiled in the course of the investigation of a crime. Ind. Code 5-14-3-2(i). ISP notes that the Indiana Court of Appeals ruled on this issue and held, “... the APRA does not limit the definition of investigatory records to those that will

interfere with active law enforcement proceedings. *Lane-El v. Spears*, 13 N.E.3d 859, 872 (Ind. Ct. App. 2014). ISP argues that the agency should not be required to provide a list of evidence collected during an investigation.

ISP disagrees with Edwards' description of the requested records, asserting that anything listing what evidence was collected at a crime scene, no matter what form the list is memorialized on, is considered an investigatory record. Furthermore, since APRA is not meant to be used a pretrial discovery tool, ISP encouraged Edwards to follow the appropriate trial procedures if he wishes to obtain the requested materials.

ANALYSIS

The primary issue in this case is what constitutes an investigatory record of a law enforcement agency.

1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

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 Indiana State Police (ISP) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy the ISP's public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains both mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Investigatory records

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). Indeed, ISP is a law enforcement agency for purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6).

That means ISP has discretion under APRA to withhold the agency's investigatory records from public disclosure. Under APRA, "investigatory record," means "information compiled in the course of the investigation of a crime." Ind. Code § 5-14-3-2(i).

In other words, "if there is no criminal investigation, the documents cannot be withheld at [the agency's] discretion pursuant to the investigatory records exception." *Scales v. Warrick County Sheriff's Department*, 122 N.E.3d 866, 871 (Ind. Ct. App. 2019).

Here, the types of records requested by Edwards are indeed immediately germane to a law enforcement investigation of a crime. Specifically, a post-mortem examination of a murder victim. Thus, APRA's investigatory records exception applies.

There is indeed a mechanism for obtaining these types of records but it is not the Access to Public Records Act.

Instead, it is the discovery process governed under the Indiana Trial Rules.

Simply put, ISP is justified in withholding the investigatory records of a law enforcement agency because the records were compiled in the course of investigating a crime. Little other analysis is required.

CONCLUSION

Based on the foregoing, it is the opinion of the public access counselor that the Indiana State Police did not violate the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor