
OPINION OF THE PUBLIC ACCESS COUNSELOR

DEANTE L. DALTON,
Complainant,

v.

ELKHART COUNTY SHERIFF'S OFFICE,
Respondent.

Formal Complaint No.
20-FC-13

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Elkhart County Sheriff's Office violated the Access to Public Records Act.¹ Attorney Nathan M. Jordan filed a response with this office on behalf of the sheriff's office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by

¹ Ind. Code § 5-14-3-1-10.

the Office of the Public Access Counselor on February 3, 2020.

BACKGROUND

This case involves a dispute over access to a recording of an interrogation conducted by the Elkhart County Sheriff's Office in 2014.

Deante L. Dalton ("Complainant"), an offender at the Wabash Valley Correctional Facility, mailed a request for public records—dated December 18, 2019—to the Elkhart County Sheriff's Office ("ECSO"). The ECSO received the request eight days later. Specifically, Dalton requested the following:

[a]udio/video recording of the interrogation of Deante Dalton, which was taken on: September of 2014 and was taken by: Det. Charles Osterday.

The ECSO acknowledged Dalton's request in writing in a letter dated January 2, 2020. In the response letter the agency indicated its intention to respond to his request within 14 days after review of the relevant records.

On January 15, 2020, the ECSO denied Dalton's request in accordance with the Access to Public Records Act's ("APRA") investigatory records exception.² As a result, Dalton filed a formal complaint with this office on February 3, 2020, alleging the ECSO improperly denied his request in violation of APRA. Dalton argues that the investigatory records exception does not apply because he is requesting a

² Ind. Code § 5-14-3-4(b)(1).

copy of his recorded confession rather than a copy of a witness statement.

On February 18, 2020, the ECSO filed a response to Dalton's complaint with this office disputing his allegation of an APRA violation. In sum, the ECSO argues that APRA's investigatory records exception applies to the records Dalton requested; and, thus it had discretion to deny his request.

Additionally, the ECSO asserts that Dalton is currently involved in a post-conviction relief ("PCR") case with recent and ongoing docket activity in Elkhart County. The agency notes that this office has previously concluded that discovery in PCR cases is not governed by APRA.

ANALYSIS

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." *Id.* The Elkhart County Sheriff's Office ("ECSO") is a public agency for the purposes of APRA; and thus, is subject to the act's requirements. Ind. Code § 5-14-3-2(q). Unless otherwise provided

by statute, any person may inspect and copy the department's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Under APRA, "public record" means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Here, the disputed record is a recording of ECSO's interrogation of Dalton. The recording is a public record under APRA.

Although public records are presumptively disclosable under APRA, the act contains exemptions and discretionary exceptions to disclosure. *See* Ind. Code § 5-14-3-4(a)-(b). This case involves the applicability of the investigatory records exception.

2. Investigatory records exception

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1).

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). Although APRA does not define "crime," our criminal code defines the term to mean "a felony or a misdemeanor." Ind. Code § 35-31.5-2-75.

Here, Dalton requested a copy of the recording of his interrogation conducted by the ECSO in September 2014. That same month, the State charged Dalton with felony murder in connection with a home invasion that resulted in the death of one of his accomplices. *See Dalton v. State*, 56 N.E.3d 644, 647 (Ind. Ct. App. 2016). A jury convicted Dalton of felony murder. *Id.*

Dalton contends that his confession during the interrogation was involuntary, which is why he is seeking a copy of the recording.

Based on the information provided, there can be little doubt that the ECSO compiled the interrogation recording in course of the investigation of a crime. As a result, the ECSO has discretion under APRA to withhold the recording from disclosure.

Dalton argues that this exception does not apply because he is request a copy of *his* interrogation recording. From a policy perspective that assertion is reasonable. But the applicability of an exemption or exception under APRA depends almost exclusively on the content of the record; and thus, the identity of the requester is largely irrelevant.

A record accumulated during a criminal investigation will constitute an investigatory record under APRA. So too is the case here.

3. Post-conviction relief discovery

The parties agree that Dalton has a pending petition for post-conviction relief (“PCR”). PCR proceedings are a function of the judicial department.

The rules governing PCR proceedings address discovery. Specifically, Post-Conviction Rule 1 section 5 says:

All rules and statutes applicable in civil proceedings including pre-trial and discovery procedures are available to the parties...The court may receive affidavits, depositions, oral testimony, or other evidence and may at its discretion order the applicant brought before it for the hearing

As a result, discovery disputes arising during a PCR proceeding are a matter to be resolved by the court.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Elkhart County Sheriff's Office did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the printed name.

Luke H. Britt
Public Access Counselor