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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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ERIC BOWMAN,  
*Complainant,*

v.

MORGAN COUNTY SHERIFF'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
20-FC-34

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Morgan County Sheriff's Office violated the Access to Public Records Act.<sup>1</sup> Attorney Todd E. Smith 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 the Office of the Public Access Counselor on March 9, 2020.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This case involves a dispute over access to law enforcement records related to a shooting and arrest in 2012.

Eric T. Bowman (Complainant), an offender at the Wabash Valley Correctional Facility, mailed a request for public records to the Morgan County Sheriff's Office ("MCSO"). Specifically, Bowman requested the following:

- 1) Police records for shooting and arrest on 12-10-12 of Eric Bowman;
- 2) Officer's report of shooting;
- 3) Witness statements and address or locations of any incidents that occurred on that day;
- 4) Any video, pictures, and or surveillance of the incidents. And thumb drives;
- 5) Any other documents related to that incident.

On January 29, 2020, the MCSO denied Bowman's request in accordance with the Access to Public Records Act's ("APRA") investigatory records exception.<sup>2</sup> The agency noted that its policy is to withhold investigatory records without a subpoena or court order.

As a result, Bowman filed a formal complaint with this office on March 9, 2020, alleging the MCSO improperly denied his request in violation of APRA.

On March 26, 2020, the MCSO filed a response to Bowman's complaint disputing his allegation of an APRA violation. In sum, the MCSO argues that APRA's investigatory records

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<sup>2</sup> Ind. Code § 5-14-3-4(b)(1).

exception applies to the records Bowman requested; and, thus it had discretion to deny his request.

## 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 Morgan County Sheriff’s Office (MCSO) 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 4 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 records are Bowman’s case file from 2012 criminal case. The records are public records under APRA. The question becomes whether they are disclosable or able to be withheld.

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, Bowman requested a copy of certain records related to his shooting and arrest in 2012. Based on the information provided, there can be little doubt that the MCSO compiled the records in the course of the investigation of a crime. As a result, the MCSO has discretion under APRA to withhold the records from disclosure.

Although discretion may not be exercised arbitrarily or capriciously, there is little suggestion the MCSO has done so in this case.

## **CONCLUSION**

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

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

**Luke H. Britt**  
Public Access Counselor