
OPINION OF THE PUBLIC ACCESS COUNSELOR

SOUTH BEND TRIBUNE,
Complainant,

v.

MISHAWAKA POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
20-FC-6

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Mishawaka Police Department violated the Access to Public Records Act.¹ Chief Kenneth L. Witkowski filed an answer on behalf of the department. 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 January 17, 2020.

¹ Ind. Code §§ 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the Access to Public Records Act requires a law enforcement agency to include vehicle accidents in the agency's daily record or log.

On January 17, 2020, Cory Havens, managing editor for the *South Bend Tribune* ("Tribune"), filed a formal complaint against the Mishawaka Police Department ("MPD").

Two weeks before the complaint, a Tribune reporter requested daily log information from MPD about a fatal accident that happened in Mishawaka on December 31, 2019.

The Tribune contends that MPD Chief Kenneth L. Witkowski told the reporter on January 3, 2020, that car crashes are not legally required to be on the daily log. The Tribune also asserts that the chief asserted that state law requires only suspected crimes to appear on the daily log.

The Tribune argues that APRA requires MPD to include accidents and requests for assistance on the department's daily log or record. Moreover, the Tribune asserts that APRA requires the daily log to include the required information within 24 hours.

On February 10, 2020, MPD filed a response to the Tribune's complaint. The department contends that it maintains a police log that abides by the standards set by APRA, with the exception of including all crash reports. MPD notes that any crash involved in a crime is included on the daily log.

Although MPD asserts that maintaining a police log has never been an issue, the department acknowledges the

state's change to an electronic crash reporting system presents challenges in meeting the 24-hour time limit.

ANALYSIS

1. The Access to Public Records Act ("APRA")

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 Mishawaka Police Department ("MPD") 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 department's public records during regular business hours. Ind. Code § 5-14-3-3(a).

2. Daily log or record

Generally, APRA does not require a public agency to create a public record. One exception, however, is the requirement that law enforcement agencies create and maintain a daily log or record listing certain law enforcement activity. Specifically, APRA provides the following:

An agency shall maintain a daily log or record that lists suspected crimes, *accidents*, or complaints, and the following information shall be made available for inspection and copying:

(1) The time, substance, and location of all complaints or requests for assistance received by the agency.

(2) The time and nature of the agency's response to all complaints or requests for assistance.

(3) If the incident involves an alleged crime or infraction:

(A) the time, date, and location of occurrence;

(B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;

(C) the factual circumstances surrounding the incident; and

(D) a general description of any injuries, property, or weapons involved.

Ind. Code § 5-14-3-5(c)(1) to -(3)(emphasis added). Indeed, APRA requires law enforcement agencies to include accidents in the daily log. Notably, APRA differentiates between incidents involving alleged crimes or infractions by requiring more information. As a result, traffic accidents that do not involve an alleged crime or infraction require an agency to include in the daily log only the information set forth in subsections (c)(1) and (c)(2).

Thus, documenting accidents on the daily log with the minimum amount of information required by law should not be nearly as burdensome as developing a full-fledged crash report or those entries involving suspected criminal activity.

APRA also sets other parameters concerning the daily log. Specifically, Indiana Code section 5-14-3-5(c) provides:

The information required in this subsection shall be made available for inspection and copying in

compliance with this chapter. *The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.*

(Emphasis added). Again, those incidents that do not involve an alleged crime or infraction require daily log entries that are more cursory in nature.

Plainly stated, APRA requires a law enforcement agency to create a daily log entry for accidents that includes: (1) the time, substance, and location of the accident; and (2) the time and nature of the agency response within 24 hours of the accident. If an accident involves an alleged crime or infraction, the law requires the additional information included in subsection (c)(3).

After the daily log entry, the agency may develop a detailed crash report as the investigation proceeds or as is consistent with Indiana Code section 9-26-2-2, a provision mutually exclusive from the daily log requirement under APRA.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Access to Public Records Act requires the Mishawaka Police Department to include traffic accidents in its daily log consistent with the provisions cited in this opinion.

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

Luke H. Britt
Public Access Counselor