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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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ERIC M. DeBUSK,  
*Complainant,*

v.

BARTHOLOMEW COUNTY SHERIFF'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
20-FC-92

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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 Bartholomew County Sheriff's Office violated the Access to Public Records Act.<sup>1</sup> Attorney Jeffery Beck filed a response on behalf of the BCSO. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 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 a criminal incident report and other records of the Bartholomew County Sheriff's Office ("BCSO").

On May 26, 2020, Eric DeBusk ("Complainant") filed a public records request with the BCSO seeking the following:

[A]ny and all information related to report numbers 2020-00959 & 2020-00926 that was forwarded to the prosecutor's office.

On June 3, 2020, the BCSO responded to DeBusk's request. The agency provided DeBusk a copy of the incident report for case number 2020-00959, but denied his request for incident report 2020-00926. The BCSO relied on the investigatory records exception under the Access to Public Records Act ("APRA") as the legal authority for the denial.<sup>2</sup> The agency explained that it was still actively investigating the case and the case was under review for possible charges by the Bartholomew County Prosecutor's Office.

DeBusk disagreed with the denial on grounds that the statute provided by the BCSO was not correct and he then requested a clarification. DeBusk contends that he did not receive clarification from the agency.

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<sup>2</sup> The BCSO cited Indiana Code section 5-24-3-4(b)(1) in the initial denial. APRA's investigatory records exception is Indiana Code section 5-14-3-4(b)(1). The agency acknowledged the error as a typo.

On June 12, 2020, DeBusk filed another public records request with the BCSO seeking the following:

1. Any and all information related to report 2020-00926 including but not limited to the police report, the factual circumstances surrounding the incident, a general description of any injuries, property or weapons involved, and information from the daily log.
2. Regarding the same report, 2020-00926, I am requesting documentation showing the timeline from when the responding road division officer took my statement (April 22nd approximately 1200hrs) to when the detective division was made aware of the theft.
3. The Standard Operating Procedure for how the above calls are handled. For example, when a call comes in reporting a theft, and the location of the stolen property is identified with a road division officer, what is the procedure for notifying the detectives and requesting a search warrant in-order to ensure timeliness is not lost and a warrant can be obtained.
4. Any documentation that was sent to the road division officers instructing them on how to handle the above situations and how to forward the reports and information to the correct parties including the detectives.

On June 17, 2020, the BCSO responded to DeBusk's request. The agency again denied DeBusk's request for the records related to case number 2020-00926. The BCSO reiterated what it said in the first denial for information related to case

number 2020-00926. Additionally, the BCSO stated that it had no records responsive to items (2), (3), and (4) in DeBusk's request.

As a result, DeBusk filed a formal complaint with this office on July 9, 2020. DeBusk argues that the BCSO improperly denied him access to public records in violation of APRA. He contends that the BCSO should have released the information he requested in items (1) and (2). DeBusk also asserts that he finds it "unbelievable that the department does not have defined SOPs," referring to items (3) and (4) of his request.

On July 28, 2020, the BCSO filed a response to DeBusk's complaint. The BCSO argues that it withheld incident report number 2020-00926 in accordance with APRA's investigatory records exception because the case was an active investigation.

Regarding item (2) of DeBusk's request, the BCSO asserts that all references to a timeline would be found in the actual incident report, which again is being withheld from disclosure because the investigation is still on-going.

Moreover, the BCSO contends that "there simply is no responsive documentation" for items (3) and (4). Overall, the BCSO chose not to disclose records related to case number 2020-00926 "in order to maintain the integrity of the investigation."

## **ANALYSIS**

The key issue in this complaint is whether the Bartholomew County Sheriff's Office had authority under the Access to

Public Records Act to deny access to a particular criminal incident report.

### **1. The Access to Public Records Act (APRA)**

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) says “(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.*

There is no dispute that the Bartholomew County Sheriff’s Office (“BCSO”) is a public agency for the purposes of the APRA; and thus, subject to the law’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and copy the BCSO’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b).

This case involves the application of APRA’s investigatory records exception.

### **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, the BCSO is a law enforcement agency for purposes of APRA. That means the agency has discretion under APRA to withhold the agency’s investigatory records from public disclosure.

### **2.1 Defining investigatory record**

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, DeBusk requested an incident report from the BCSO and the agency denied disclosure because there was a pending criminal investigation.

Based on the information presented, this office concludes that the BCSO had authority under APRA’s investigatory records exception to withhold incident report number 2020-00926 from disclosure.

At the same time, APRA also requires law enforcement agencies to create, maintain, and disclose certain information related to suspected crimes.

Specifically, APRA requires law enforcement agencies to maintain a daily record or log that lists—among other

things—suspected crimes and make the following information 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.

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.

Ind. Code § 5-14-3-5(c). DeBusk alludes to this statute in the phrasing of item 1 of his request. So, while the full criminal incident report narrative may be withheld in this case, the BCSO should have disclosed the daily log information.

As a final aside, regarding items 3 and 4 on the request, the BCSO argues that it has no records responsive to the request. DeBusk does not believe that is true.

APRA governs disclosure of public records. The term public record is defined by statute. *See* Ind. Code § 5-14-3-2(r). The issue of whether a record exists is usually matter of fact. Although it is common for law enforcement agencies to have standard operating procedures, DeBusk's subjective belief that the agency is not being truthful about the existence of a specific record is not enough to conclude the BCSO violated APRA in this case. Conversely, if the BCSO indeed has records responsive to DeBusk's request, it must disclose them under APRA unless an exemption or exception applies.



## **CONCLUSION**

It is the opinion of this office that the Bartholomew County Sheriff's Office did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor