
OPINION OF THE PUBLIC ACCESS COUNSELOR

WILLIAM PESLAK
Complainant,

v.

INDIANAPOLIS METRO POLICE DEPT.,
Respondent.

Formal Complaint No.
21-FC-123

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indianapolis Metropolitan Police Department (IMPD) violated the Access to Public Records Act.¹ Legal Advisor Daniel Bowman filed an answer on behalf of the Department. In accordance with Indiana Code § 5-14-5-10,

¹ Ind. Code § 5-14-3-1-10.

I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 25, 2021.

BACKGROUND

This case involves a dispute over the application of the investigatory records exception under the Access to Public Records Act (APRA).

On August 9, 2021, William Peslak (Complainant) filed a public records request with IMPD seeking “911 audio recordings of any and all call in’s reporting this incident,” and the “CAD records for this incident.” Peslak describes the incident as a hit and run motor vehicle accident.

On August 23, 2021, IMPD provided Peslak with the CAD report he requested, but denied his request for 911 recordings in accordance with APRA’s investigatory records exception. IMPD noted that it does not, as a general rule, release investigatory records without a subpoena.

Two days later, Peslak filed a formal complaint against IMPD with this office. Peslak argues that the investigatory records exception should not apply because “there is no active investigation ... the investigation is complete and charges have been acquired.”

On September 14, 2021, IMPD filed a response denying Peslak’s allegations of wrongdoing. IMPD contends the investigatory records exception applied in this case because the responding officers in this case had information indicating that the accident involved an intoxicated driver.

Furthermore, IMPD argues that the investigatory records exception, contrary to Peslak’s assertion, can be applied regardless of whether an investigation is active.

IMPD maintains that the law grants them the discretion to withhold the requested records; and thus, the agency did not violate the Access to Public Records Act.

ANALYSIS

1. The Access to Public Records Act

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 Indianapolis Metropolitan Police Department (IMPD) 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 IMPD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b). Here, the parties dispute the applicability of APRA’s investigatory records exception to 911 recordings.

2. Investigatory records exception

APRA gives a law enforcement agency the discretion to withhold the agency’s investigatory records from public disclosure. *See* Ind. Code § 5-14-3-4(b)(1). Indeed, IMPD is a

law enforcement agency for purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6). That means IMPD has discretion 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 6 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 “crime” to mean “a felony or a misdemeanor.” Ind. Code § 35-31.5-2-75.

Here, IMPD withheld certain 911 audio recordings in accordance with the investigatory records exception. IMPD contends the responding officers had information indicating the accident involved intoxicated driving.

Peslak contends the exception does not apply because the situation involved a hit and run vehicle accident and there is no active criminal investigation.

Notably, both leaving the scene of an accident and operating a vehicle while intoxicated are criminal offenses.² As a result, IMPD has discretion to withhold records compiled in the course of the investigation into either of those offenses or both.

² Ind. Code § 9-30-5-1; Ind. Code § 9-26-1-1.1(b)(1).

At the same time, it is worth mentioning that motor vehicle accidents are not inherently criminal (e.g., a felony or misdemeanor) in nature. Indeed, criminal culpability may arise in connection with a vehicle accident but not always.

As a final aside, IMPD correctly points out that APRA does not limit the applicability of the investigatory records exception based on the age of the records or the status of the investigation. Our courts have observed and recognized the the same. *See Lane-El v. Spears*, 13 N.E.3d 859 (Ind. Ct. App. 2014). It is also worth mentioning that the court in *Lane-El* also cites the statute cautioning against applying discretion arbitrarily.

There are policy arguments aplenty for limiting the scope of the investigatory records exception to active investigations, but that is simply not the state of the law today.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indianapolis Metropolitan Police Department 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