
OPINION OF THE PUBLIC ACCESS COUNSELOR

RICHARD KERLEY
Complainant,

v.

LAFAYETTE POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
21-FC-131

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Lafayette Police Department violated the Access to Public Records Act.¹ City Attorney Jacque Chosnek 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 September 1, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we consider whether the Lafayette Police Department's (LPD) copy fee for public records complies with the Access to Public Records Act (APRA).

On July 7, 2021, Richard Kerley (Complainant), filed a public records request with the LPD seeking the following:

- Copies of all reports, memorandums, addendums, and any other documents or correspondence, pertaining to the case that took place starting around Frontage Road and ending on Perrin Avenue near Main on the evening of Thursday, March 4th, case # 21-2587 in their un-redacted and complete form.
- All Lafayette radio transmissions on all police frequencies from March 4, 2021 @ 20:00 through March 5, 2021 @ 01:00.
- Information on each and every individual public official or employee that was involved with case # 21-2587, to include their full name, rank badge or identification number, and unit number as well as their salary.
- All electronic dispatch and mobile data system information, including notes and intradepartmental, as well as interdepartmental information, regarding case # 21-2587, in its complete and un-redacted form.
- All electronic correspondence and personal communication by each and every public official and employee regarding case # 21-2587.
- Body camera footage from each and every public official and public employee involved in case # 21-2587 in their complete and unredacted entirety.
- Dash camera footage in its complete and unredacted entirety from each and every official police department vehicle involved in case # 21-2587.

- All criminal intelligence information related to the pursuit and traffic stop for case # 21-2587 for the individuals who were reasonably suspected of involvement in criminal activity.
- Any and all administrative communications in their complete and unredacted form involving this incident from each and every public official and employee that was involved in case # 21-2587.
- Training records in their complete and unredacted form for each and every public official and employee that was involved in case # 21-2587.
- Any discipline history for each and every public official and employee that was involved in case # 21-2587 in their complete and unredacted form.
- Complaint and investigatory review history for each and every public official and employee that was involved in case # 21-2587.

On August 23, 2021, the LPD provided Kerley with some of the requested records. LPD provided Kerley with an invoice for \$2,440 for “Production of Documents 16 Body Cam 1 911 Audio Case Report.”

On September 1, 2021, Kerley filed a formal complaint against LPD alleging the copy fee violates the Access to Public Records Act. Specifically, Kerley argues that LPD’s copy fee for the materials provided is both excessive and violative of the law.

On September 17, 2021, the LPD filed an answer to Kerley’s complaint denying his claims. First, the LPD contends that it initially provided Kerley with the requested reports, body camera footage, dash camera footage, and a DVD of radio transmissions, and explained that that other parts of his request for documents are either in the process of being pro-

duced and were not included in the original due to an oversight or misunderstanding, or the records are not subject to disclosure under the Access to Public Records Act.

Notably, the LPD did not address the issue of the copy fee it charged Kerley to produce records.

On October 18, 2021, this office received notice from LPD that Kerley collected the rest of the documents, which fulfilled the request. This office verified with Kerley that he was satisfied with the records LPD provided; however, the matter of the \$2,440 copying had never been resolved.

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 Lafayette Police Department (LPD) 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 agency’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) to -(b).

2. Copy fees

Kerley argues that the LPD impermissibly charged him a copy fee of \$2,440 for the public records he requested. Kerley contends the copy should not have exceeded \$200. The Lafayette Police Department did not respond to Kerley's claim about the excessive copy fee.

Copy fees for public records are governed and capped by statute. *See* Ind. Code § 5-14-3-8. Most records may not exceed the greater of ten cents per page for black and white copies or the agency's actual cost of copying the document. Ind. Code § 5-14-3-8(d)(1) to (2).

Under APRA, "actual cost" means:

the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

Ind. Code § 5-14-3-8(d). Additionally, APRA governs the copy fee for a law enforcement recording.² Ind. Code § 5-14-3-8(g). Essentially, a law enforcement agency may charge a uniform fee for a copy of a law enforcement recording that does not exceed the sum of the following:

² "Law enforcement recording" means an audio, visual, or audiovisual recording of a law enforcement activity captured by a camera or other device that is: (1) provided to or used by a law enforcement officer in the scope of the officer's duties; and (2) designed to be worn by a law enforcement officer or attached to the vehicle or transportation of a law enforcement officer. Ind. Code § 5-14-3-2 (k).

The agency's direct cost of supplying the information in that form. However, the fee for a copy of a law enforcement recording may not exceed one hundred fifty dollars (\$150).

Ind. Code § 5-14-3-8(g)(1). Notably, "direct cost" is also defined by statute. Ind. Code § 5-14-3-2(d).

Here, the LPD did not make an argument about Kerley's claim about an excessive copy fee. Kerley provided an invoice with his complaint indicating LPD charged him \$2,440 for what the invoice describes as 16 body cam and one 911 audio case report.

Although this office will not make legal arguments on behalf of a public agency, it appears LPD charged a flat fee of \$150 dollars for 16 law enforcement recordings, which would equal \$2,400. The \$150 fee is the ceiling for a copy of a law enforcement recording instead of the floor. An agency may only recoup its "direct cost" up to \$150.

This office recommends the Lafayette Police Department revisit its copy fee policy and change course to comply with the law consistent with this opinion. Moreover, LPD should consider recalculating the copy fee it charged Kerley in this case using the direct cost standard in the statute. To the extent there is a difference (and there almost certainly is), LPD should issue a refund to Kerley.

At the same time, this case should serve as a cautionary tale for those requesting public records. It is far easier to challenge the amount of a copy fee in this office or in court before paying it. Undoubtedly, it is more difficult to get the fee refunded after the fact.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Lafayette Police Department violated the Access to Public Records Act by charging \$2,440 for copies of the public records requested in this case.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt
Public Access Counselor