
OPINION OF THE PUBLIC ACCESS COUNSELOR

SAM L. STECKLOW
Complainant,

v.

FORT WAYNE POLICE DEPARTMENT,¹
Respondent.

Formal Complaint No.
21-FC-203

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the City of Fort Wayne violated the Access to Public Records Act.² Attorney Malak Heiny filed an answer on behalf of the City of Fort Wayne. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

¹ Stecklow also filed a similar complaint against the Indianapolis Metropolitan Police Department.

² Ind. Code § 5-14-3-1-10.

the formal complaints received by the Office of the Public Access Counselor on December 29, 2021.

BACKGROUND

This case involves a dispute over access to public records associated with a 2017 fatal police action shooting in Fort Wayne.

On November 23, 2021, Sam Stecklow (Complainant) filed a public records request with the Fort Wayne Police Department (FWPD) seeking the following:

...a copy of the FWPD Internal Affairs or administrative investigation into the fatal shooting of Jeffrey Daniel Jones by a FWPD officer on 10/27/17. I also request a copy of any compelled interviews taken with the subject officer(s) as part of the investigation.

On November 30, 2021, the city denied Stecklow's request. The city cited Indiana Code sections 5-14-3-4(b)(1) and 5.2(a)(2)(C) as authority for the denial.

On December 28, 2021, Stecklow filed a formal complaint against FWPD alleging the city improperly denied him access to records in violation of the Access to Public Records Act (APRA). Stecklow contends that an administrative investigation by FWPD's Internal Affairs division does not qualify as an investigation of a crime, especially when the investigation happened four years ago.

On January 24, 2022, FWPD filed an answer to Stecklow's complaint. FWPD argues that it properly applied APRA's investigatory records exception in denying the request.

Specifically, FWPD contends that the timing of the investigation is not contemplated by statute and the ability to exercise discretion has not expired. Additionally, FWPD argues the investigation of the police action shooting was inextricably linked to the underlying criminal investigation leading to the shooting.

Moreover, FWPD asserts that APRA's exceptions for deliberative materials and public employee personnel files also apply to the records Stecklow requested. The department maintains that it developed the internal affairs file in a vacuum for human resource management on the part of the officer. Therefore, both the deliberative materials and the personnel file exceptions apply.

Stecklow filed a reply to FWPD's response. This office considered those counterpoints. They will be addressed herein as well.

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 Fort Wayne Police Department (FWPD) 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 FWPD'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).

This case primarily involves the application of APRA's discretionary exceptions for the investigatory records of law enforcement agencies; deliberative materials; and personnel records.³

2. Investigatory records of crimes versus internal affairs investigations

This office has long grappled with the breadth of the application of the investigatory records exception. It has been a significant issue of public access during the past decade and is the source of considerable contention.

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). That discretion, however, is not absolute.

Indeed, FWPD is a law enforcement agency for purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6). That means FWPD has discretion to withhold its 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 exception." *Scales v.*

³ Although the exception for withholding body worn camera footage was invoked in the original denial, it does not have an immediate bearing on this case and will not be considered.

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.

This office has never been presented an argument that an internal affairs investigation into a police action shooting inherently begins with the presumption of a crime. An internal affairs investigation is launched as a matter of course rather than circumstance. Some indeed manifest as crimes, but the internal review process is preliminary.

There is no indication here that the internal affairs investigation was criminal in nature even if it existed because of an adjacent criminal investigation. This office can foresee cases where an internal investigation could be criminal in nature but declines to do so in this matter.

3. Deliberative materials and personnel files

FWPD argues that APRA’s disclosure exceptions for deliberative materials and employee personnel files apply to the records at issue here. This argument is more compelling.

The original denial notwithstanding, FWPD’s burden shifts to demonstrating to this office that the files should not be released because they fall into a confidential or discretionary category.

Deliberative materials are one such exception and are defined as follows:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a

contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Ind. Code § 5-14-3-4(b)(6). Internal affairs investigations undoubtedly are a fact-finding exercise but may also contain subjective opinions regarding a sequence of events. They are used in the decision-making process insofar as disciplinary recommendations are concerned.

The factual elements of an investigation are not inherently speculative or opinion-based and could not be qualified as deliberative. Subjective narratives that include notional information may be withheld.

Regarding the personnel file exception, APRA gives an agency the discretion to withhold materials in a personnel file with some notable exceptions that are not at play here. *See* Ind. Code § 5-14-3-4(b)(8).

Although the term “personnel file” is not expressly defined, Stecklow’s argument that information unrelated to human resource management cannot qualify for withholding simply by virtue of being placed in a personal file. Stecklow’s argument is well taken. For example, an agency cannot put a budget or contract in a personnel file and try to use the exception as justification for withholding it.

Here, however, that does not seem to be the case. From the perspective of this office, internal affairs documentation is—at the very least—personnel-file-adjacent. The materials that manifest from an internal affairs investigation is very much apropos of employee management. To the extent they

qualify as a personnel file documentation is not an illogical leap.

The intent of an internal affairs investigation is to scrutinize an officer's performance and to determine whether disciplinary action against the officer is warranted. We see no difference between an IA document being in a personnel file than any other municipal employee personnel management record.⁴

Ultimately, the original denial issued to Stecklow does not pass muster because the investigatory record exception does not apply. Stecklow also did not appear to request body-worn camera footage of investigatory activity.

⁴ We recognize this could be considered a broadening of *Opinion of the Public Access Counselor* 14-FC-135, however, based on the facts of this case, it is our current position.

CONCLUSION

Based on the information provided, while the initial denial was erroneous, the withholding was not. FWPD has carried its burden in response to the formal complaint to demonstrate that the withholding of the records was legally justified and not arbitrary or capricious.⁵



Luke H. Britt
Public Access Counselor

⁵ Stecklow filed a substantially similar complaint against the Indianapolis Metropolitan Police Department. This office immediately provided notice to IMPD, solicited a response on multiple occasions, and did not receive one. To that extent, IMPD has not carried its burden to demonstrate the denial was appropriate and is in violation of the Access to Public Records Act and Indiana Code section 5-14-5-5, which requires public agency to cooperate with this office in any investigation or proceeding under this chapter.