

OPINION OF THE PUBLIC ACCESS COUNSELOR

PAULA A. FRAZIER
Complainant,

v.

INDIANAPOLIS METRO. POLICE DEP'T.
Respondent.

Formal Complaint No.
21-FC-3

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 violated the Access to Public Records Act.¹ IMPD Legal Advisor Daniel Bowman 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

¹ Ind. Code § 5-14-3-1-10.

by the Office of the Public Access Counselor on January 11, 2021.

BACKGROUND

This case involves a dispute over access to records related to a fatal car crash and the subsequent investigation by the Indianapolis Metropolitan Police Department (IMPD).

On November 20, 2020, Paula A. Frazier (Complainant) filed a public records request with IMPD requesting the following: “all investigation reports generated by IMPD/Crash Investigators,” related to the October 11, 2020, fatal traffic accident involving her son Tyler Long.

On December 10, 2020, IMPD responded by providing the Frazier a redacted copy of the investigatory report. Frazier argues that since no criminal charges are being pursued against the other driver, it does not appear necessary for so much information to have been redacted on the final report. She also notes discrepancies between the public records she has been able to obtain.

IMPD argues the redactions are appropriate based on the Access to Public Records Act’s (APRA) investigatory records exception, which allows law enforcement agencies to withhold from public disclosure information compiled in the course of the investigation of a crime. IMPD contends the accident was being criminally investigated since narcotics were recovered from the vehicle and noted in a toxicology report.

Furthermore, IMPD redacted a large portion of the materials provided to Frazier, specifically pages 15 to 39, because they contained records from the Indiana Data and

Communications System (IDACS) on persons of interest to the investigation. IMPD asserts that IDACS records are confidential in accordance with Indiana Administrative Code 5-1-1. Overall, IMPD contends that the decision to redact portions of the records provided to Frazier was appropriate and lawful.

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 the law’s 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 IMPD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a); -(b). This case largely involves APRA’s investigatory records exception.

2. Investigatory records exception

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. 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 under APRA 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 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 "crime" to mean "a felony or a misdemeanor." Ind. Code § 35-31.5-2-75.

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.

Our legislature granted law enforcement agencies a considerable amount of discretion to withhold sensitive material accumulated during criminal investigations through APRA's investigatory records exception. This scope of the exception is arguably the broadest APRA has to offer.

Here, among other things, the coroner's office (a law enforcement agency for purposes of APRA) concluded and documented in its report that the crash was an accident and not caused by any crime. Without more, APRA's investigatory records exception does not apply. IMPD has not suggested that there was any furtherance of a criminal investigation into the accident itself beyond noting the

deceased's possession of illegal drugs in the car where he died. To the extent this led to an ancillary investigation into the source of the drugs, IMPD has not indicated as much and indeed it is not immediately germane to the accident where Long perished.

Therefore, if the accident itself is not criminal in nature, there is no justification for invoking APRA's investigatory records exception.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the investigatory records exception does not apply to the records requested in this case. This office recommends IMPD release the requested records in accordance with the Access to Public Records Act.



Luke H. Britt
Public Access Counselor