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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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RON WILKINS,  
*Complainant,*

v.

INDIANA STATE POLICE,  
*Respondent.*

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Formal Complaint No.  
22-FC-157

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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 that the Indiana State Police (ISP) violated the Access to Public Records Act.<sup>1</sup> Legal counsel Jeff Pitts filed an answer on behalf of ISP. 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 November 8, 2022.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This case involves a dispute about whether the Indiana State Police (ISP) violated the Access to Public Records Act (APRA) by failing to disclose records requested by a member of the press.

On October 28, 2022, Ron Wilkins (Complainant), a reporter for the *Lafayette Journal & Courier*, submitted a public records request (both written and telephonically) to ISP for information regarding the arrest of a suspect in a murder case in Carroll County. The arrest occurred on October 26, 2022. Wilkins was seeking information mandated to be disclosed pursuant to Indiana code section 5-14-3-5. His request was denied on October 29.

Wilkins contends he was entitled to the information no more than 24 hours after the arrest. He filed his complaint on November 8.

ISP confirmed that Wilkins was denied the information until October 31, 2022 when ISP held a press conference and issued a press release. ISP argues it was “under the direction” of the county prosecutor and that any court records were sealed.

It further argues that the APRA only requires the creation of the records in question within 24 hours but not their release.

## ANALYSIS

### 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. Further, 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.” *Id.*

The Indiana State Police (ISP) 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 ISP’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. Daily log or record

This case involves a dispute over the timing of the release of information relating to the arrest of an individual.

APRA requires law enforcement agencies to create, maintain, and disclose a daily log or record that lists suspected crimes, accidents, or complaints that includes the following information:

- (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. Ind. Code § 5-14-3-5(c).

Ind. Code § 5-14-3-5. Additionally, if a person is arrested and jailed, the following must be logged:

(1) Information that identifies the person including the person's name, age, and address.

(2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.

(3) The time and date that the person was received and the time and date of the person's discharge or transfer.

(4) The amount of the person's bail or bond, if it has been fixed.

An agency must make the information available for inspection and copying in compliance with APRA. The record containing the information must be created within 24 hours after the suspected crime, accident, complaint or arrest has been reported to the agency. *Id.*

Setting aside the scarcity of information fulfilling subsection (a) of the statute, the issue at hand concerns *when* ISP must disclose the daily log after receiving a request to inspect or copy it.

This office previously addressed this issue in a case where ISP was also the respondent. In that case, this office observed the following:

Essentially, ISP argues that APRA requires only the creation of the daily log within 24 hours, but not disclosure for inspection and copying within 24 hours. Instead, ISP asserts that requests for the daily log are treated like all requests for records, which subjects the requester to a possible wait time of 21 days for access.

When disputes like this arise under APRA, this office—like our courts—examines the statute as a whole, avoiding excessive reliance upon a strict literal meaning or the selective reading of individual words with the presumption that the legislature intended for the statutory language to be applied in a logical manner consistent with the statute’s underlying policy and goals. *See 21st Amendment, Inc. v. Indiana Alcohol & Tobacco Comm’n*, 84 N.E.3d 691, 696–97 (Ind. Ct. App. 2017).

We know from APRA’s preamble that the legislature’s policy 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.

Moreover, the legislature expressly states that “[p]roviding persons with the 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. This chapter shall be liberally construed to implement this policy...”  
*Id.*

...

The framework of the requirement of Section 5 implies easy accessibility and convenience for a requester. If a daily log is maintained chronologically, it follows that a request for a single day should not be difficult to produce.

So, the issue is what constitutes a reasonable time to provide records that an agency must—by statute—create within 24 hours of an event.

...

Indeed, this office consistently advises requesters and agencies that “reasonable time” is determined case by case.

A daily log is distinguishable because if an agency is following the law, there should be no searching, gathering, or reviewing the daily log. The process should be rather more expedient. Some law enforcement agencies maintain a physical binder with the daily log inside and make it available for review upon request. A department will simply insert pages from that day into a three-ring folder and its cumulative compilation satisfies the daily log.

It is true, as ISP argues, that APRA's language specifically mandates the creation of daily log within 24 hours but not disclosure. Even so, this office is skeptical that our legislature would statutorily require law enforcement agencies to create a record within 24 hours, but not disclose those records for [several days following a request]. That does not comport with the command of the statute.

Arriving at such a conclusion would require this office to do virtually the opposite of our statutory charge of liberally construing the law in favor of transparency.

For a log that must exist, hopefully in an organized chronological fashion, search time is next to nil and retrieval is a simple task. The records are already deemed to be unequivocally disclosable<sup>2</sup>, so no legal or administrative review is necessary.

One thing is clear, if a law enforcement agency complies with the statutory command of APRA and creates a daily log as required, a reasonable time would involve little to no waiting by the requester.

Since the law requires creation of the record within 24 hours, a reasonable time to provide that record should be no more than the time to create it. The APRA does not require many records to be created pursuant to its provisions, but

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<sup>2</sup> Notably, law enforcement agencies enjoy broad discretion to withhold details of investigations and investigatory materials except the items in the daily log. The level of detail in the daily log is another matter altogether and is scrutinized on a case-by-case basis.

this is one of them. In turn, they should be maintained in a manner which is easily accessible and requests should not be difficult to fulfill promptly.

*Opinion of the Public Access Counselor, 20-FC-25 (2020).* The same conclusion applies today.

### **3. The role of the prosecutor and judiciary in documenting arrests**

ISP also cites the local prosecutor and presiding judge as factors in the delay. While that matter is being addressed in other opinions, it is notable that APRA's daily log requirement for law enforcement is not a judicial record. As a result, the daily log is mutually exclusive from any court record over which judicial officers have purview.

The daily log statute applies to law enforcement agencies in the executive branch of government. It is an affirmative duty that cannot be bargained, pled, or motioned away through a court procedure.

This office remains convinced that much of the consternation regarding public access in this case is much of the government's own doing. Simply put, the law enforcement agencies at play could have anticipated an onslaught of requests for the arrest information and prepared accordingly instead of keeping the public in the dark for several days until they arranged a more convenient method of disseminating information.



## CONCLUSION

Based on the foregoing, it is the opinion of this office that the daily log information required by the Access to Public Records Act should have been made available on demand no later than 24 hours after the suspect's arrest.



Luke H. Britt  
Public Access Counselor

Issued: February 10, 2023<sup>3</sup>

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<sup>3</sup> This office held this opinion in abeyance until the court issued its most recent orders in this case.