
OPINION OF THE PUBLIC ACCESS COUNSELOR

BRYCE T. DANIELS,
Complainant,

v.

UNIVERSITY OF NORTE DAME POLICE DEP'T.,
Respondent.

Formal Complaint No.
22-FC-9

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the University of Notre Dame Police Department violated the Access to Public Records Act.¹ Attorney Brian Guarraci filed an answer on behalf of the NDPD. 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 January 14, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records of the Notre Dame Police Department (NDPD).

On January 12, 2022, Bryce T. Daniels (Complainant), filed a public records request with the NDPD seeking the following:

All records the police department has regarding the November 5, 2021 meeting of Bryce Thomas Daniels with Detective Stebbins, including but not limited to, a video copy of the interview with the detective, statements by anyone regarding Bryce Thomas Daniels, any document or statement as part of any investigation concerning Bryce Thomas Daniels, and all correspondence the police department maintained with the University of Notre Dame, and its administrators, concerning any investigations into or concerning Bryce Thomas Daniels.

The next day, NDPD denied Daniels' request. The department stated that it had no arrest or incarceration records regarding the incident; and thus, it did not have any documents responsive to the request.

On January 14, 2022, Daniels filed a formal complaint alleging NDPD's denial violated the Access to Public Records Act (APRA). Daniels disputes the argument that since he had not been arrested or incarcerated by the NDPD, the agency is not obligated to disclose any records.

On January 27, 2022, Notre Dame filed an answer denying Daniels' claims.

First, Notre Dame argues that Daniels requested the investigatory records of a private university police department, which the department has discretion to withhold from disclosure under APRA.

Second, Notre Dame asserts that Daniels failed to request any other disclosable records under APRA.

This opinion will provide additional facts as necessary.

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.*

There is no dispute that APRA applies to private university police departments. *See* Ind. Code § 5-14-3-2(q)(11).

“Private university police department” means:

[T]he police officers appointed by the governing board of a private university under IC 21-17-5.

Ind. Code § 5-14-3-2(o). The University of Notre Dame is a private university with its own police department, which the university established in accordance with Indiana Code

section 21-17-5. Thus, Notre Dame's campus police department is subject to APRA.

As a result, certain records of the Notre Dame Police Department are public records and must be made available for inspection and copying in accordance with Indiana Code section 5-14-3-2.2.

2. Private university police records

Under APRA, certain records of private university police departments are public records and subject to disclosure. *See* Ind. Code § 5-14-3-2.2.

As a preliminary matter, it is important to acknowledge that APRA's applicability to the records of a private university police department is narrower than it is with other law enforcement agencies.

Here, NDPD initially denied Daniels' request because it had no "arrest or incarceration records regarding the incident" in question. In other words, NDPD had nothing responsive to the request. Daniels disputed this claim with NDPD before filing a complaint with this office.

In its answer, NDPD argues that Daniels claims are meritless for two reasons: (1) Daniels requested investigatory records of a private university police department; and (2) he failed to request any other records that qualify as public records under APRA.

2.1 Investigatory records of private university police

APRA gives a law enforcement agency, including a private university police department, the discretion to withhold the agency's investigatory records from public disclosure.

See Ind. Code § 5-14-3-4(b)(1). Indeed, NDPD is a law enforcement agency for purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6). That means NDPD 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 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, based on the information provided, it is unclear if there is or was a criminal investigation. Daniels contends that NDPD summoned him to the department for a recorded interview, which he describes as an interrogation, with a detective. Daniels contends NDPD informed him of allegations against him that had not arisen from people pursuing NDPD, but rather from the department soliciting them from undefined persons.

NDPD offers a conclusory statement that the investigatory records exception applies, at least in part, to withhold the requested records. Indeed, NDPD notes that Daniels used the words “investigated” and “investigation” in his complaint as clear evidence of the exception’s applicability. The exception only applies to records compiled during the course of the investigation of a crime.

Conclusory statements are insufficient to carry the burden of nondisclosure under APRA. Without more, it would be inappropriate for this office to make applicability arguments on NDPD's behalf.

2.2 Disclosable private university police records

NDPD also argues that it denied Daniels' request, in part, because he failed to request records that qualify as public records under APRA.

As set forth above, certain records of private university police departments are public records and subject to disclosure. *See* Ind. Code § 5-14-3-2.2.

Specifically, the statute designates the following as public records :

(1) A record created or received after July 1, 2016, by a private university police department, to the extent the record:

(A) is created solely for a law enforcement purpose; and

(B) relates to arrests or incarcerations for criminal offenses.

(2) A record that is created in compliance with 20 U.S.C. 1092 and 34 CFR 668, to the extent that public access is required under federal law.

The name of a crime victim must be redacted, unless release of the name is authorized by the crime victim.

(3) The following records concerning a law enforcement officer employed by a private university police department:

(A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of the law enforcement officer.

(B) Information relating to the status of any formal charges against the law enforcement officer.

(C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the law enforcement officer being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

The name of a crime victim must be redacted, unless release of the name is authorized by the crime victim.

Ind. Code § 5-14-3-2.2. Again, NDPD offers little substance in support of its conclusion that Daniels requested records that are not public records under Section 2.2. Con-

clusory statements are not enough to invoke exemptions and exceptions under APRA.

Even still, Daniels did not sufficiently describe the issue to make a substantive determination. This office is simply left with too many unknowns and will not presuppose details to fill in the blanks.

In any event, since NDPD denied the request, Daniels may file a civil action in accordance with section 9 of APRA. Ind. Code § 5-14-3-2.2(b) but more evidentiary substance is needed for a conclusion.

CONCLUSION

Ultimately, the complaint filed did not present an actionable issue upon which the public access counselor is comfortable opinion. That written, it is the opinion of this office that if the complaint was meritorious the Notre Dame Police Department would not have carried the burden of nondisclosure as required under the Access to Public Records Act.



Luke H. Britt
Public Access Counselor

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