
OPINION OF THE PUBLIC ACCESS COUNSELOR

JACQUELINE J. AGEE
Complainant,

v.

ST. JOHN POLICE DEPARTMENT
Respondent.

Formal Complaint No.
23-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 St. John Police Department violated the Access to Public Records Act.¹ Attorney David W. Westland 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 January 10, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

On November 11, 2022, Jacqueline J. Agee (Complainant) filed a public records request with the St. John Police Department (SJPd) requesting the following:

Pursuant to Ind. Code § 31-39-3-2 to -3[,] which allows for exceptions to juvenile records, I hereby request all police reports, police body worn camera footage, police squad car footage, and any other relevant records pertaining to a police incident on November 22, 2022[,] involving John Agee...in the area of 9317 Villagio Way St. John.

On December 22, 2022, SJPd provided Agee with over three hours of body worn camera footage in response to the request. Although Agee concedes that certain redactions are appropriate because the case involves juveniles, she asserts that SJPd redacted or muted 11 minutes of footage that did not fall under that category. Agee believes the footage captured a phone call between a responding officer and detective.

Agee emailed SJPd the same day asking for the department to identify the disclosure exception authorizing the redaction of the 11 minutes of footage in question.

On January 3, 2023, SJPd followed up with Agee. SJPd stated that department policy authorizes the use of body cameras only during law enforcement operational duties. Specifically, SJPd noted body cameras must not be used to record follow-up investigative briefings or any personal conversation between other department employees without the recorded employee's knowledge. SJPd directed Agee to

forward further questions to the Town of St. John's attorney.

Agee emailed SJPD's attorney later that day. The next day, SJPD's attorney emailed Agee stating the matter had been turned over to the juvenile prosecutor, and that a case was pending. SJPD's attorney directed Agee to request information from the prosecutor assigned to the case.

On January 10, 2023, Agee filed a formal complaint with this office alleging SJPD violated APRA. Specifically, Agee argues the department failed to provide the statutory basis authorizing the department to deny access to the footage.

On January 23, 2023, SJPD filed an answer to Agee's complaint denying the department violated APRA. Specifically, SJPD argues the redacted conversation is part of an ongoing investigation; and thus, the department redacted it in accordance with Indiana Code section 5-14-3-5.2(a)(2)(C).²

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 Town of St. John and the St. John Police Department (SJPD) are public agencies for purposes of APRA; and therefore, subject to the law's requirements. *See* Ind. Code §

² SJPD cites Indiana Code section 5-14-3-5.2(a)(1)(C) in its answer. Since there is no such statute, this office presumes this to be a scrivener's error.

5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy SJPD's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Notably, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a), to -(b).

This case involves the applicability of a disclosure exception for law enforcement recordings (i.e., body worn and dash camera recordings).

2. Law enforcement recordings

In general, any person may inspect and copy a law enforcement recording unless one or more of the following circumstances apply:

(1) Section 4(b)(19) of this chapter applies and the person has not demonstrated that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The public agency finds, after due consideration of the facts of the particular case, that access to or dissemination of the recording:

(A) creates a significant risk of substantial harm to any person or to the general public;

(B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;

(C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency as defined in section 2 of this chapter

and notwithstanding its exclusion under section 4(b)(1) of this chapter; or

(D) would not serve the public interest.

However, before permitting a person to inspect or copy the recording, the public agency must comply with the obscuring provisions of subsection (e), if applicable.

Ind. Code § 5-14-3-5.2(a).

3. Denial of disclosure

Under APRA, a public agency may deny a written public records request if:

(1) the denial is in writing or by facsimile; and

(2) the denial includes:

(A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

(B) the name and the title or position of the person responsible for the denial.

Ind. Code § 5-14-3-9(d). Here, Agee argues that SJPD failed to provide a statement of the specific exemption authorizing the withholding of part of the public record.

This office agrees.

Based on the evidence provided, SJPD did not provide a statement of any specific exemption or exception authorizing the denial of access. Initially, SJPD merely cited a department policy without indicating why it applied to the re-

quest. The department then referred Agee to the town's attorney, which resulted in another referral to the prosecutor assigned to the case.

It was only after Agee filed a complaint with this office that SJPd explained the redacted footage was part of an ongoing investigation; and thus, excepted from disclosure under Indiana Code section 5-14-3-5.2(a)(2)(C).

APRA, however, requires such a statement to happen sooner. Ideally in the agency's initial denial. That did not happen in this case. This office recommends SJPd do so in the future.

At the same time, it is important for this office to acknowledge that SJPd substantially complied with APRA in this case. The parties agree that the department took less than a month to provide Agee over three hours of body camera footage along with the related police report. This disclosure happened during the holiday season, which is both commendable and unusual.

Going forward, this office recommends SJPd provide a requester with a statement of why the department is legally authorized to deny a public records request.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the St. John Police Department violated the Access to Public Records Act by failing to include a statement in the denial of the specific exemption or exemptions authorizing the agency to withhold all or part of the public record as required under Indiana Code section 5-14-3-9(d)(2).



Luke H. Britt
Public Access Counselor

Date: January 31, 2023