



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

**PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 14, 2011

Ms. Amanda Hamon
Lafayette Journal and Courier
Via email: ahamon@jconline.com

Re: Informal Inquiry 11-INF-21; City of West Lafayette

Dear Ms. Hamon:

This is in response to your informal inquiry regarding your request to the City of West Lafayette ("City"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion regarding the City's refusal to release complete copies of a police video depicting the shooting of an individual by the West Lafayette Police Department.

According to your informal inquiry, you contacted the City Attorney, Eric H. Burns, and requested in writing that the City release to you a complete copy of a police video depicting the shooting of a suspect by the West Lafayette Police Department. Your request for a complete copy of the video came as a result of only a partial release of the video by local law enforcement in a press conference held on March 21, 2011. You claim that at that press conference, the local police released and disseminated all portions of the video to the media, except the segment showing the shooting. You were advised by the police chief "it was the department's stance that it would be inappropriate to show the suspect being shot." In his initial response to your request, Mr. Burns, advised that it "might be possible for a reporter to view the full video under the condition that the portion showing the suspect being shot was not disseminated on the newspaper website." Mr. Burns later contacted you and informed you the Tippecanoe County Prosecutor has instructed that the complete video not be released. Mr. Burns sent you a denial letter claiming the video was exempt from disclosure pursuant to the investigatory records exception under the Access to Public Records Act.

City Attorney Eric H. Burns responded to your inquiry on behalf of the City. Mr. Burns substantially concurs with your portrayal of events in your email. Mr. Burns maintains the City's position that the video is exempt from disclosure under the investigatory records exception to the APRA. Mr. Burns advises that formal charges have been filed against the individual who was shot, and as such, the "City has appropriately exercised its discretion to release a portion of the video to enable the public to see the actions that precipitated the police action shooting."

The public policy of the APRA states, “[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.” I.C. § 5-14-3-1. The City does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the City refused to provide you with portions of the videotape pursuant to Ind. Code § 5-14-3-4(b)(1). Under that subsection of the APRA, a law enforcement agency generally has the discretion to withhold investigatory records. Investigatory records are defined by the APRA as records compiled during the investigation of a crime. I.C. § 5-14-3-2(h). The City maintains that the record you sought is a part of the criminal investigation that resulted in the formal charges brought against the individual involved in the shooting. If that is indeed the case, the City did not violate the APRA by refusing to provide the records to you because the APRA grants the city the discretion to withhold investigatory records, in whole or in part.

If I may be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Eric H. Burns