



# STATE OF INDIANA

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June 3, 2014

Mr. Greg Dawson  
607 Lake Harbor Circle  
Orlando, Florida 32809

*Re: Informal Inquiry 14-INF-18; Law Enforcement Records of Older Investigations*

Dear Mr. Dawson:

This is in response to your informal inquiry regarding investigatory records of the City of Bloomington Police Department ("BPD"). The City has responded via Corporation Counsel Margie Rice. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1.

## **BACKGROUND**

On July 5, 2013, you submitted a request for public information to the BPD for a full police report for two named individuals arrested in 1968. You plan to use this information in a book you are researching. On August 5, 2013 you received from the City an arrest report partially satisfying your request. The City has withheld the entirety of the file as an investigatory record under Ind. Code § 5-14-3-4(b)(1).

At the invitation of this Office, the City has responded to your informal inquiry arguing the release of the arrest report satisfies the requirement of Ind. Code § 5-14-3-5 et. seq. and the release of the remainder of the file is discretionary pursuant to Ind. Code § 5-14-3-4(b)(1).

## DISCUSSION

The public policy of the 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.” See Ind. Code § 5-14-3-1. The Bloomington Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the BPD’s non-confidential public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. See Ind. Code § 5-14-3-3(a).

The investigatory records exception to the APRA provides a law enforcement agency has the discretion to disclose or not disclose its investigatory records. See Ind. Code § 5-14-3-4(b)(1). An investigatory record is “information *compiled in the course of* the investigation of a crime.” Ind. Code § 5-14-3-2(i) (emphasis added).

In construing any statute, Indiana courts will look to the plain, ordinary, and usual meaning of the language unless the statute itself clearly provides a contrary meaning. *Marion County Sheriff’s Merit Bd. v. Peoples Broadcasting Corp.*, 547 N.E.2d 235, 237 (Ind. 1989). Nontechnical, undefined words are to be defined by their ordinary and accepted dictionary meaning. *Bulkomatic Transport v. Department of Revenue*, 629 N.E.2d 955, 957 (Ind. Tax 1994).

Because the statutory language is clear the exception does not only apply to those records created by law enforcement agencies, but also to those law enforcement records *compiled in the course of* an investigation. The investigatory record exception is one of the broader APRA disclosure exceptions. Accordingly, it is also applied broadly by law enforcement agencies. Disclosure is discretionary, therefore the APRA defers to law enforcement to decide which pieces of information to release – the information is not generally confidential.

The Indiana General Assembly has clearly given law enforcement agencies the option to withhold the records you seek. However, in my opinion, the APRA begins with the presumption of disclosure and carves out exceptions when warranted – not necessarily the other way around. It is not the role of the Public Access Counselor to tell law enforcement agencies when to disclose investigatory records and when not to, but I can certainly advocate for transparency.

Withholding an investigatory record is certainly fitting when the release could jeopardize the integrity of an investigation (even cold cases). It is also justifiable when release would have a detrimental effect on a victim, witness or minor. That being said, agency release of investigatory records is a choice. When release is harmful, it should certainly be withheld. When a case is closed; so far in the past as to be no longer germane to a foreseeable investigation; or merely ancillary material captured in the course of any investigation, an agency should scrutinize their decision in a light favorable to transparency.

In no way am I criticizing the decision of the BPD to withhold the records. They are the subject matter experts charged with handling their investigations in the pursuit of public

safety. Rather, this opinion is aimed at all Indiana law enforcement agencies to encourage them to examine their records release practices to be consistent with the spirit of APRA and public interest.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

cc: Ms. Margie Rice; Mr. Greg Small