
OPINION OF THE PUBLIC ACCESS COUNSELOR

JENNIFER VANDALSEN,
Complainant,

v.

TIPPECANOE CO. SHERIFF'S DEPARTMENT &
TIPPECANOE CO. CORONER'S OFFICE,
Respondent.

Formal Complaint No.
22-FC-138

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to two formal complaints alleging that the Tippecanoe County Sheriff's Department and the Tippecanoe County Coroner's Office violated the Access to Public Records Act.¹ Attorney Douglas Masson filed an answer on behalf of both agencies. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received by the

¹ Ind. Code § 5-14-3-1-10.

Office of the Public Access Counselor on September 28, 2022.

BACKGROUND

This case involves a dispute over autopsy photos requested by the decedent's mother.

Jennifer VanDalsen (Complainant) requested crime scene photos of her deceased child from both the Tippecanoe County Coroner and Sheriff. The Coroner's office denied the request as it was not the agency that took the photos in question – no autopsy photos were taken. The Sheriff's office did take photographs at the crime scene, however, VanDalsen's request was denied pursuant to the investigatory records exception found in the Access to Public Records Act.

Filing her complaint on September 28, 2022, VanDalsen takes exception to the Sheriff's denial as the death was ruled a suicide and no criminal investigation took place. Additionally, she appears to imply the Coroner should have the photos in its possession as well.

The Sheriff and Coroner submitted a joint response to her complaint. The response reiterates that the Coroner does not have records responsive to VanDalsen's request. Rather, the Sheriff (and Lafayette PD) took the photos and are in their respective possession. In any event, the Sheriff qualifies the photos as investigatory in nature and the Sheriff has exercised the discretion to withhold them.

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 Tippecanoe County Sheriff and Coroner are public agencies for purposes of APRA; and therefore, are 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 their office’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. Autopsy photos and investigatory records

Due to the sensitive nature of autopsy records, only certain individuals have standing to access them from a Coroner upon request. In this instance, a surviving parent would have that standing. *See* Ind. Code § 36-2-14-10(c).

Here, however, it appears as if autopsy photos were not taken by the Coroner, but by the Sheriff’s office, who also took photographs at the scene where the body was discovered. Both offices qualify the records as “investigatory”.

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). Indeed, the Tippecanoe County Sheriff is a law enforcement agency for purposes of APRA, as is the Coroner in certain contexts². See Ind. Code § 5-14-3-2(q)(6). That means both agencies have discretion under APRA to withhold the agency’s 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 exception.” *Scales v. Warrick County Sheriff’s Department*, 122 N.E.3d 866, 871 (Ind. Ct. App. 2019). The Scales case is critical in this regard because it recognizes the important distinction between criminal matters and other law enforcement activities.

While APRA’s investigatory record’s exemption is broad and gives considerable discretionary latitude to police and their law enforcement partners, it is not absolute and all-encompassing. Indeed, this office has recognized the contrasting distinction as well. See Opinions of the Public Access Counselor 19-FC-75 & 76.

Here, the Sheriff and Coroner have not satisfied their burden to demonstrate through its response that the photos in question implicate criminality, even if investigators were

² See generally *Althaus v. Evansville Courier Co.*, 615 N.E.2d 441 (Ind. Ct. App. 1993).

on the scene. The Court in *Scales* appears to set the bar relatively high as there seemed to be significant suspicion surrounding the circumstances in which the decedent's body was found. That does not appear to be the case in the current case, based on the information provided.

Coupled with the standing to view autopsy photos in Indiana Code section 36-2-14-10(c), the lack of an apparent criminal investigation suggests the photos should be released. In the several years since the Court ruled in the *Scales* case, there has not been an appetite by the General Assembly to propose any legislation which would broaden the investigatory record exception more than it already is.

This office cannot fault the Sheriff and Coroner for being reticent about releasing still photos of deceased individuals³, even to family members. However, the statutory framework and binding jurisprudence interpreting Indiana Code does not support withholding them in this instance.

³ Notably, body worn camera footage falls under a different standard where the obscuring of death or a dead body is mandatory. See Ind. Code § 5-14-3-5.2(e)(1)(B)(i).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Tippecanoe County Sheriff or Coroner, whichever office is in possession of the autopsy photos, should release them to the decedent's mother.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Issued: December 21, 2022