
OPINION OF THE PUBLIC ACCESS COUNSELOR

KEVIN W. GREENLEE,
Complainant,

v.

INDIANA STATE POLICE,
Respondent.

Formal Complaint No.
22-FC-48

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana State Police (ISP) violated the Access to Public Records Act.¹ Attorney Cynthia Forbes 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 March 24, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the Indiana State Police (ISP) waived the investigatory record exception of the Access to Public Records Act (APRA) by granting access to one individual but not the public.

On March 2, 2022, Kevin Greenlee (Complainant) filed a public records request with ISP seeking the following:

The complete case file of the investigation into the Burger Chef murders, including but not limited to all notes, recordings, evidence, photographs and reports kept in the binders that are related to this case.

ISP acknowledged and denied the request on March 9, 2022. The agency cited APRA's investigatory records exception as the basis for the denial.

On March 24, 2022, Greenlee filed a formal complaint arguing that ISP waived its right to invoke the investigatory records exception because the agency granted access to the file to another individual in, or prior to, 2019.²

Greenlee provided several emails demonstrating the working relationship between the ISP detective and the individual to whom access was granted. These were submitted after the complaint was forwarded to ISP, however, were made part of the official complaint file and we confirmed ISP had reviewed them.

² This situation was similarly analyzed in both *Opinion of the Public Access Counselor 19-FC-70*; and *Informal Opinion of the Public Access Counselor 19-INF-6*. Both opinions are incorporated by reference.

For its part, ISP reiterates the arguments made in the 2019 opinions, notably that the detective had authorization to work with the other individual, but to disclose information already publicly known. Toward that end, ISP reprimanded and counseled the detective and maintains that ISP as an agency has not waived any legal standing to invoke an exception to disclosure.

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 Indiana State Police (ISP) is a public agency for purposes of APRA; and therefore, 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 ISP’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. Opinion of the Public Access Counselor 19-FC-70

Greenlee is seeking ISP’s entire investigatory file for the Burger Chef murders. Notably, these are the same records at issue in an earlier complaint filed with this office. *See Opinion of the Public Access Counselor, 19-FC-70 (2019)*.

In that opinion, this office was critical of the ISP employee's actions and offered the following:

From the perspective of the Complainant, giving access to one podcaster over another is arbitrary and unfair. It seems as if ISP may be playing favorites and picking and choosing who receives "most favored nation" status in the economy of public access transactions. From a 10,000 foot view, this is a credible interpretation of the circumstance. And make no mistake, had ISP ratified the district commander's actions or given him authorization to do so, this Office would agree.

Reviewing ISP's response, however, it is obvious that internal controls and protocols were not followed but corrective measures were taken to ensure compliance going forward. This Office does not believe that one employee acting in an individual capacity necessarily binds the entire agency to those rogue actions when he has not been given authorization to act in a particular manner. ISP as the principal did not give the commander agency to grant permission to inspect the files.

Id. One crucial difference between that complaint and this one is the additional information provided by Greenlee, which may or may not suggest the employee had the go-ahead from superiors to allow access to the file. Given the context of the information provided and balanced against ISP's official written statements to this office, it is not conclusive that he did have official permission.

A court, taking sworn testimony and authenticated evidence under oath, may indeed find that ISP waived the discretion to withhold the requested records in accordance with APRA's investigatory records exception. Based on those limitations and the information provided, however, this office does not see fit to change its conclusion in 19-FC-70.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana State Police did not waive its ability to withhold investigatory records and did not apply its discretion arbitrarily in this instance.

A handwritten signature in black ink, appearing to read 'LHB', with a stylized flourish underneath.

Luke H. Britt
Public Access Counselor

Issued: May 17, 2022