
OPINION OF THE PUBLIC ACCESS COUNSELOR

TIMOTHY S. SPEARS,
Complainant,

v.

UNIVERSITY OF NOTRE DAME POLICE DEP'T.,
Respondent.

Formal Complaint No.
22-FC-58

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the University of Notre Dame Police Department violated the Access to Public Records Act.¹ Attorney Brian Guarraci filed an answer on behalf of the NDPD. 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 April 11, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether a private university police department's manual of standard operating procedures is subject to disclosure under the Access to Public Records Act (APRA).

On April 5, 2022, Timothy S. Spears (Complainant), filed a public records request with the Notre Dame Police Department (NDPD) seeking the following:

The Standard Operating Procedure manual for Notre Dame Police Department. If it goes by another name, the document used to outline NDPD policies.

Two days later, NDPD denied Spears' request. The department stated that the Standard Operating Procedure manual (SOP) does not qualify as a disclosable public record under APRA.

On April 11, 2022, Spears filed a formal complaint alleging NDPD's denial violated APRA. Spears argues that the SOP is created solely for a law enforcement purpose and directly relates to every arrest, incarceration, and overall interaction involving an NDPD officer. As a result, Spears asserts the SOP is disclosable under Indiana Code section 5-14-3-2.2(a)(1).

On May 2, 2022, Notre Dame filed an answer disputing Spears' claim. Specifically, NDPD argues that the department's SOP manual is not one of the three types of records that APRA requires a private university police department to disclose.

NDPD argues that the department did not create the SOP manual solely for law enforcement purposes, which is required for disclosure under APRA.

Additionally, NDPD contends that the interpretation of APRA under Indiana Code § 5-14-3-2.2 (a)(1)(B) identifies the records of *individuals* arrested or incarcerated be available for public access, and not necessarily records relating to the *process* of the acts of incarceration or arresting.

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.*

There is no dispute that APRA applies—at least in part—to private university police departments. *See* Ind. Code § 5-14-3-2(q)(11).

“Private university police department” means:

[T]he police officers appointed by the governing board of a private university under IC 21-17-5.

Ind. Code § 5-14-3-2(o). The University of Notre Dame is a private university with its own police department, which the

university established in accordance with Indiana Code section 21-17-5. Thus, Notre Dame's police department is subject to APRA even though the remainder of the university is not.

As a result, certain records of the Notre Dame Police Department are public records and must be made available for inspection and copying in accordance with APRA. *See* Ind. Code § 5-14-3-2.2.

2. Private university police records

Under APRA, certain records of private university police departments are public records and subject to disclosure. *See* Ind. Code § 5-14-3-2.2.

Specifically, in relevant part, APRA designates the following records of a private university police department as disclosable public records:

- (1) A record created or received after July 1, 2016, by a private university police department, to the extent the record:
 - (A) is created solely for a law enforcement purpose; and
 - (B) relates to arrests or incarcerations for criminal offenses.

Ind. Code § 5-14-3-2.2(a). As a preliminary matter, it is important to acknowledge that APRA's applicability to the records of a private university police department is narrower than it is with other law enforcement agencies.

Here, NDPD denied access to its standard operating procedures manual on the basis that the record was not created

solely for a law enforcement purpose and does not relate to arrests or incarcerations for criminal offenses.

NDPD argues the SOP manual was not created solely for law enforcement purposes because the record does not relate to instances where specific individuals are (or were) subject to arrest. NDPD analogizes its disclosure requirements to those set forth in APRA's daily log provision for law enforcement. *See* Ind. Code § 5-14-3-4-5.

Indeed, public universities have similar SOP manuals intermingling policy and law enforcement. Here, Spears does not appear interested in the policy or student disciplinary aspects of NDPD's SOP manual. Even if he did, this office agrees that those sections of the manual would be under the private university umbrella and not a public record for purposes of APRA.

There can be no question, however, that the portions of a police department's SOP manual that outline the process and procedures regarding how arrests or incarcerations are effectuated are written solely for law enforcement purposes. This is presumably what Spears is seeking.

If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request, separate the material that may be disclosed and make it available for inspection and copying. *See* Ind. Code § 5-14-3-6(a).

Even so, Indiana Code section 5-14-3-2.2(a)(1) is conjunctive, meaning that both subsections must apply for the record to be disclosable.

Toward that end, NDPD posits that the statute intended to address specific arrests or incarcerations for criminal offenses and not the *process* of arrests or incarcerations generally.

NDPD's point is well taken. This office is significantly familiar with the intent of the legislature when drafting these provisions because litigation originating from a public records dispute became the impetus for their promulgation. The new laws were meant to address information generated from activity under Indiana Code section 5-14-3-5: the "daily log" statute.

The legislature likely did not intend to make all materials merely adjacent to arrests or incarcerations public record. While SOP manuals are an example of arrest-adjacent, one could read the statute broadly to extend to budgets, receipts for equipment, squad car mileage, and beyond.

This office is careful not to read words into the plain meaning of a statute, but this is a notable exception. It is our understanding that the law is only intended to apply to *individual* arrests or incarcerations consistent with the requirements of Indiana Code section 5-14-3-5. The law was not intended to make administrative materials of private university police departments disclosable. Therefore, the NDPD SOP manual can remain in house.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Notre Dame Police Department did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

Issued: June 8, 2022