
OPINION OF THE PUBLIC ACCESS COUNSELOR

CRAIG HENDRY,
Complainant,

v.

SULLIVAN COUNTY SHERIFF'S OFFICE,
Respondent.

Formal Complaint No.
23-FC-111

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Sullivan County Sheriff's Office violated the Access to Public Records Act.¹ Attorney Craig McKee and Sheriff Jason Bobbitt filed an answer on behalf of the agency. 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 November 1, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to a nonemergency phone call received by a sheriff's department.

On October 20, 2023, Craig Hendry, Complainant, submitted a public records request for a nonemergency call to the Sullivan County Sheriff's Department. The recording of the call was denied that same day.

By way of background, on October 22, 2023, a phone call was placed to the Sullivan County Sheriff's Office non-emergency line regarding a suspicious individual, later determined to be Hendry. Sullivan County dispatched a Town of Farmersburg municipal police officer to investigate. After detaining Hendry, it was determined that he was not subject to a warrant and concluded the investigation.

Hendry filed his complaint on October 31, 2023.

While the initial denial by the Sullivan County Sheriff did not cite express authority, the Sheriff supplemented the denial with citations in its response to the complaint, filed with this office on November 20, 2023.

The Sheriff argues that the holding of *Carroll County E911 v. Hasnie*, 148 N.E.2d 996 (Ind.Ct.App.2020) allows a law enforcement agency to withhold 9-1-1 calls as an investigatory record of a law enforcement agency. Although non-emergency calls were not explicitly addressed in *Hasnie*, the Sheriff draws a conclusion that non-emergency calls would be covered by the same analysis.

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 Sullivan County Sheriff’s Office 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 the Sheriff’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). This case involves the applicability of APRA’s fee schedule compared to a local ordinance.

2. Investigatory records

Under APRA, the investigatory records of law enforcement agencies may be excepted from disclosure at the discretion of the agency. Ind. Code § 5-14-3-4(b)(1).

Moreover, “investigatory record” means “information compiled in the course of the investigation of a crime.” Ind. Code § 5-14-3-2(i). Notably, APRA does not define the term crime, but the Indiana Code generally defines crime as “a felony or misdemeanor.” *See* Ind. Code § 35-41-1-6.

Here, a non-emergency call was placed to a Sheriff's office regarding a suspicious individual, however, the investigation was concluded without incident.

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). Indeed, The Sullivan County Sheriff's Office is a law enforcement agency for purposes of APRA. See Ind. Code § 5-14-3-2(q)(6).

That means the Sheriff has 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, 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.

What is more, no discretionary exception in APRA is absolute. As a preliminary matter, APRA places the burden of proof for the nondisclosure of a public record on the agency. See Ind. Code § 5-14-3-1. For the purposes of this proceeding, that means the Sheriff must justify the application of

APRA's investigatory records exception the records requested by Hendry.

Additionally, if an agency cannot show that its decision to withhold a discretionary record is not arbitrary or capricious, it may be found in violation of the law by a court. *See* Ind. Code § 5-14-3-9(g)(2). This office adopts a similar standard for administrative adjudicative purposes.

The *Hasnie* case need not enter the conversation as there is little-to-no criminality implicated in this case, nor is there any degree of sensitivity or emergency cited. Neither is there any investigatory methodology or procedure at stake. The denial appears to be arbitrary.

The most the Sheriff could withhold in this case is found at Indiana code section 5-14-3-4(b)(21):

The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

Otherwise, the remainder of the call should be released upon request.

CONCLUSION

Based on the foregoing, it is the opinion of this office the Sullivan County Sheriff cannot rely upon the investigatory records exemption to withhold a non-emergency call of this nature.

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

Luke H. Britt
Public Access Counselor

Issued: November 30, 2023