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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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RYAN J. FOLEY,  
*Complainant,*

v.

INDIANA STATE POLICE,  
*Respondent.*

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Formal Complaint No.  
23-FC-85

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana State Police violated the Access to Public Records Act.<sup>1</sup> Attorney Jeff Pitts filed an answer on behalf of ISP. 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 September 1, 2023.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

On June 7, 2023, Ryan J. Foley, a reporter for the Associated Press, filed a public records request with ISP. Foley renewed and expanded a previous AP request for records and video files related to ISP's investigation into a 2019 incident involving Taylor Ware and his death three days later. Essentially, Foley asked ISP to use its discretion under the Access to Public Records Act (APRA) to disclose the full case file or as many records and video files as possible.

Five days later, ISP denied Foley's request in accordance with APRA's investigatory records exception.<sup>2</sup> It is worth mentioning that ISP denied a substantially similar records request from another AP reporter in 2021 for the same reason.

As a result, on August 28, 2023, Foley filed a formal complaint with this office alleging ISP improperly denied the request.

In September, ISP filed a response to Foley's complaint. ISP argues that Foley missed the statutory deadline to file a complaint; and thus, this office should summarily dismiss the complaint.

## **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

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<sup>2</sup> Ind. Code § 5-14-3-4(b)(1).

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 the city’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. Deadline to file a formal complaint**

ISP contends that Foley missed the deadline to file a formal complaint in this case. Notably, ISP denied Foley’s request on June 12, 2023, and Foley filed a complaint on August 28, 2023.

Toward that end, ISP argues Foley is barred from filing because he exceeded the statutory deadline set forth under Indiana Code section 5-14-5-7, which provides—in relevant part—the following:

A person or a public agency that chooses to file a formal complaint with the counselor must file the complaint not later than thirty (30) days after:

(1) the denial...

*Id.* This office takes its cues from the Open Door Law and uses business days instead of calendar days when calculating timing.<sup>3</sup> Therefore, we do not count weekends and holidays.

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<sup>3</sup> Ind. Code § 5-14-1.5-5(a).

We are consistent with that policy and err on the side of the complainant when there is a close call.

In this case, to be timely, Foley needed to file a formal complaint with this office by the end of July. Foley did not file until August 28, 2023.

In any event, despite Foley's complaint being untimely, given the age and context of this case, this office recommends ISP revisit the request and consider disclosing the requested records.

## CONCLUSION

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

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor

Issued: November 3, 2023