
OPINION OF THE PUBLIC ACCESS COUNSELOR

EMILY MIEURE,
Complainant,

v.

INDIANA STATE POLICE,
Respondent.

Formal Complaint No.
24-FC-18

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 violated the Access to Public Records Act.¹ Attorney Cynthia Forbes 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 February 15, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we consider the investigatory records exception to disclosure of a closed murder case.

On January 12, 2024, Emily Mieure of Audiochuck (Complainant), filed a public records request with the Indiana State Police (ISP) seeking records relating to a murder case from 1984 where the murderer was convicted in 1987.

On February 11, 2024, attorney Cynthia Forbes provided a response on behalf of ISP. The complainant was advised that ISP's records pertaining to their request were considered investigatory and would not be disclosed.

Mieure filed her complaint on February 16, 2024.

ISP provided a response to the formal complaint on March 8, 2024. For its part, ISP argues that its attorneys reviewed the and did not discover any material that it could separate from what it determined was sensitive material.

What is more, ISP argues there are a myriad of reasons to keep investigatory records of closed cases in-house in order to preserve the integrity of past and future investigations including witness privacy considerations, investigatory tactics and other sensitive information collected by law enforcement that would not otherwise be public record but for the investigation.

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, is subject to law’s 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).

At the same time, 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 the investigatory records exception.

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.

This case is similar in scope to Opinion of the Public Access Counselor 23-FC-76. That opinion opined:

It is true that this office is not always in lock-step with ISP's policy of withholding records just because they qualify as investigatory.² Indiana's investigatory records exception is exceptionally broad compared to other states and even the federal Freedom of Information Act. Even when an agency has statutory discretion to withhold a record, it cannot be done so arbitrarily, that is, without consideration of underlying reasons.

Nonetheless, this office is not a law enforcement agency and therefore some deference to the subject matter experts is warranted. As ISP articulates in its response, criminal investigations are complex and have many moving parts which can often contain sensitive information. Sensitive law enforcement information can include investigatory methodology, witness and victim info, or specific public safety considerations that would make disclosures imprudent.

The difference between cases where this office has disagreed with ISP is based on that complexity. For example, a marijuana possession case³ versus a murder investigation.⁴

² See Informal Op. of the Public Access Counselor, 23-INF-11 (2023).

³ *Opinion of the Public Access Counselor*, 15-FC-17 (2015).

⁴ *Opinion of the Public Access Counselor*, 22-FC-48 (2022).

Here, ISP states it conducted a thorough review of the materials to determine if anything was indeed disclosable. Instead of implementing a blanket policy of non-disclosure (which this office does deem arbitrary), it treated this request with a bespoke review. That course of action is all that this office asks – a good faith determination either way.

Even older cases (both closed and cold) can still be considered discretionary release. Without more, it does not appear as if ISP's actions were arbitrary.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana State Police has carried its burden of nondisclosure under APRA with this office.



Luke H. Britt
Public Access Counselor

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