



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 5, 2015

Ms. Paula Lavigne
ESPN Plaza
Bristol, CT 06010

Re: Formal Complaint 14-FC-306; Alleged Violation of the Access to Public Records Act by the University of Notre Dame Security Police Department

Dear Ms. Lavigne,

This advisory opinion is in response to your formal complaint alleging the Notre Dame Security Police Department ("NDSPD"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* NDSPD has responded to your complaint via Assistant General Counsel, Mr. Brian Guarraci, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor ("PAC") December 9, 2014.

BACKGROUND

Your complaint dated December 8, 2014, alleges the Notre Dame Security Police Department violated the Access to Public Records Act (IC 5-14-3) by improperly denying you access to records.

On or about November 4, 2014, you submitted a public records request to NDSPD seeking "all incident reports, including officer narrative, for certain specified individuals." You received a response and a denial from NDSPD on November 11, 2014 arguing that despite an opinion issued from this office on October 31, 2014 stating otherwise, NDSPD was not a public law enforcement agency.

On November 20, 2014, you submitted an additional, more specific request to NDSPD seeking what amounted to the daily log for named individuals pursuant to Ind. Code § 5-14-3-5. The University again denied your request citing prior PAC opinions, as well as claiming it does not have records responsive to your request.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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.” See Ind. Code § 5-14-3-1. As stated in *Opinion of the Public Access Counselor 14-FC-239*, the Notre Dame Security Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1)¹. Any person has the right to inspect and copy NDSPD’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

My Opinion issued in *14-FC-239* contemplated the reliance of NDSPD on prior PAC Opinions stating private university police forces were not public. As explained in that Opinion, the weight of case law and public policy reasons for declaring them public is substantial and compelling. Notions of fairness precluded me from finding a violation as it would be inequitable to apply that decision *ex post facto*.

Now that NDSPD has been on notice this office considers them to be a public law enforcement agency, my expectation is they release records accordingly and comply fully with the Access to Public Records Act. Prior PAC Opinions are strictly persuasive authority and do not have the force and effect of law. Similarly, the October opinion is not compulsory, however, it identifies the legal and policy reasons the current officeholder considers when making a determination regarding law enforcement agencies. Therefore, going forward, I expect law enforcement agencies to adapt to the most recent guidance. The reversal of course was not taken lightly or without regard to the impact on private university police forces. Nevertheless, the burden to conform to the Access to Public Records Act should not be so burdensome as to be unreasonable.

Your November 4, 2014 request likely contains a fair amount of information which can be considered investigatory records. That information may be withheld at the discretion of a law enforcement agency pursuant to Ind. Code § 5-14-3-4(b)(1). Accordingly, NDSPD, as a public law enforcement agency, may exercise their discretion when it comes to releasing investigatory records.

Your November 20, 2014 information request, however, is essentially the daily log required to be maintained by law enforcement agencies per Ind. Code § 5-14-3-5. It is likely NDSPD does not have a specific log with the requested information contained therein. At the time of any incidents concerning the individuals named in your access request, NDSPD was operating under the assumption a daily log was not required. It is reasonable to conclude, however, some kind of documentation was generated if NDSPD was involved.

¹ 14-FC-239 is hereby incorporated by reference in this Opinion.

As a substitution for creating a separate record labeled as a daily log, a law enforcement agency will use daily incident reports containing the information which is required to be in the log. Therefore, when the log is requested, copies of the incident reports will be released instead. The agency may choose to redact information not required to be maintained by the log which would be considered investigatory. However, the remainder of the log is released. It has been standing policy of this office to accede to this as an acceptable practice. I see no reason to deviate from this policy. So long as the agency provides at least the minimum information which is required by Ind. Code § 5-14-3-5(c) to be made available for inspection and copying, it may do so.

Should NDSPD have documentation which satisfies the requirements of Ind. Code § 5-14-3-5(c), it must disclose that documentation and separate any confidential or discretionary information as appropriate.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that if the Notre Dame Security Police Department has documentation regarding any suspected crimes, accidents or complaints involving the individuals named in your request, and has not released that particular documentation, then they have violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Brian Guaracci, Esq.