



STATE OF INDIANA

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December 15, 2014

Mr. Jason P. Britt, Esq.
C/o Chicago Public Media, Inc.
321 North Clark St., Ste. 2800
Chicago, IL 60654

Re: Formal Complaint 14-FC-284; Alleged Violation of the Access to Public Records Act by the City of Hammond

Dear Mr. Britt,

This advisory opinion is in response to your formal complaint alleging the City of Hammond ("City"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded via Mr. Robert J. Feldt, 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 November 21, 2014.

BACKGROUND

Your complaint against the City of Hammond dated November 21, 2014, alleges the City violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to produce required records.

On or about October 23, 2014, Chicago Public Media filed a public records request to the City seeking a 911 call recording. The City relied on the investigatory record exception to disclosure in order to justify withholding the record. Your complaint suggests the investigatory record is inapplicable to the record and that the City cannot claim the exception as it is not a law enforcement agency.

The City responded to your complaint by detailing its reasoning for considering the record to be investigatory. Additionally, the City argues the Hammond Police Department is embedded in the City and is part of the same entity. The City is not the custodian of the record, but rather the Police Department retains the information and the City has authority to claim the exception on the Department's behalf.

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. The City of Hammond is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the City’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).

The investigatory records exception to the APRA provides a law enforcement agency has the discretion to disclose or not disclose its investigatory records. See Ind. Code § 5-14-3-4(b)(1). An investigatory record is “information *compiled in the course of the investigation of a crime.*” Ind. Code § 5-14-3-2(i) (emphasis added).

A public agency is only obligated to state the exception applicable to non-disclosure of a record when it denies access. A detailed explanation is not necessarily required. See Ind. Code § 5-14-3-9(d)(2)(A). When responding to a complaint to the Public Access Counselor’s Office, you are correct that the Agency has the burden of demonstrating a particularized showing of why the record should be considered investigatory. It is my opinion they have done so in their response to your formal complaint, however, please consider the following from *Opinion of the Public Access Counselor 14-FC-135*:

The investigatory records exception is indeed one of the broader, and most liberally applied, exceptions in the APRA. I have continuously cautioned law enforcement agencies to use the exception in a light most favorable to transparency and access – all the more so when release of information would not compromise the integrity of an investigation.

Accordingly, although the City may claim the exception, I encourage them to revisit the issue in light of transparency and best practice. Exceptions to disclosure should be exercised judiciously and in favor of good governance.

It appears as if the City and its Police Department consider themselves to be inextricably linked. It is true not all administrations conduct themselves in such a way. It is not claiming the exception for itself as a municipality – it seems as if the City does not have copies of the records; but rather it is exercising the exception on behalf of the Police Department. If the City’s administration were to have *separate* copies of the 911 recording, it would not have standing to use the exception. A City’s executive functions may include responding to public records requests on behalf of its Departments. This practice is consistent with the Access to Public Records Act.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of Hammond has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt
Public Access Counselor

Cc: Mr. Robert J. Feldt, Esq.