

# STATE OF INDIANA

**ERIC J. HOLCOMB, Governor** 

#### PUBLIC ACCESS COUNSELOR LUKE H. BRITT

Indiana Government Center South 402 West Washington Street, Room W470 Indianapolis, Indiana 46204-2745 Telephone: (317)234-0906 Fax: (317)233-3091

> Toll Free:1-800-228-6013 Email: pac@in.gov/opac Website: www.IN.gov/pac

## OPINION OF THE PUBLIC ACCESS COUNSELOR

GARY A. WILLIAMS,	)
Complainant	)
v.	) 17-FC-16
FORT WAYNE POLICE DEPARTMENT	)
Respondent	, )

### ADVISORY OPINION March 8, 2017

This advisory opinion is in response to the formal complaint alleging the Fort Wayne Police Department ("FWPD") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. FWPD responded on February 7, 2017 via Ms. Malak Heiny, Esq., Associate City Attorney. Her response is included for review. Pursuant to 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 January 26, 2017.

#### **BACKGROUND**

The formal complaint dated January 23, 2017 alleges the FWPD violated the APRA by not fulfilling a records request.

On or about January 7, 2017, the Complainant submitted a public records request to the FWPD for a "sign-out sheet" indicating whether two named officers checked out body camera equipment for their patrol. This request was denied on January 18, 2017 with FWPD citing the non-existence of the records.

FWPD responded to the formal complaint arguing the records do not exist and gave a brief background of the request history from the Complainant.



# STATE OF INDIANA

**ERIC J. HOLCOMB, Governor** 

# PUBLIC ACCESS COUNSELOR LUKE H. BRITT

Indiana Government Center South 402 West Washington Street, Room W470 Indianapolis, Indiana 46204-2745 Telephone: (317)234-0906 Fax: (317)233-3091

Toll Free:1-800-228-6013 Email: pac@in.gov/opac Website: www.IN.gov/pac

#### **ANALYSIS**

The public policy of the 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." *See Indiana Code § 5-14-3-1*. The Fort Wayne Police Department is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the FWPD's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

This Office has stated on several occasions that a public agency does not have to produce records which do not exist. Whether the records actually exist or not is a matter of fact for the Courts to decide. Testimony as to its existence should be obtained through the trial discovery phase of a criminal or civil proceeding and is not ripe for a formal complaint to this Office.

#### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Fort Wayne Police Department did not violate the Access to Public Records Act.

Luke H. Britt

**Public Access Counselor** 

Cc: Ms. Malak Heiny, Esq.