
OPINION OF THE PUBLIC ACCESS COUNSELOR

KENNETH ELTZROTH,
Complainant,

v.

WABASH POLICE DEPARTMENT
Respondent.

Formal Complaint No.
17-FC-194

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the City of Wabash Police Department (“Department”) violated the Access to Public Records Act¹ (“APRA”). The City responded on August 24 via City Attorney Randi Zimmerman. 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 August 14, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Kenneth Eltzroth (“Complainant”) filed a formal complaint alleging that the Department violated the Access to Public Records Act by wrongfully denying him access to certain records.

In a request dated June 19, 2017, the Eltzroth requested the Department’s Standard Operating Procedures (“SOP”) for “Search and Seizure, and Impound, policy and procedure guidelines and rules, in use in December 2005” as well as “the Controlled Buy Policy and Procedures, guidelines and rules, including Audio and Video Recording procedures, in use in April and May, 2012.” The Complainant also said in his request that he would “request the dates specified only, and the section specified only.” Finally, the Complainant requested that the Department “notify [him] if any changes have been made, or if any other type of procedure is followed, notwithstanding the S.O.P. Handbook.”

The Department responded to Complainant’s request in correspondence dated July 10, 2017. The Department declined to provide the requested records, citing Indiana Code sections 5-14-3-4(b)(1) and 5-14-3-4(b)(6).

ANALYSIS

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 Wabash Police Department is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the Department's disclosable 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). A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received. Ind. Code § 5-14-3-9(c).

Indiana Code section 5-14-3-4(b)(1) provides that the investigatory records of law enforcement agencies are excepted from disclosure at the discretion of the agency. Indiana Code section defines investigatory records as "information compiled in the course of the investigation of a crime." The Department argues that its standard operating procedures for search and seizure, and controlled buys are "investigative tool[s]" used by the Department.

Additionally, the Department argues the records are deliberative in the course of the decision-making process under Indiana Code section 5-14-3-4(b)(6); and thus, disclosure of the records may compromise the safety of a law enforcement officer or a confidential source.

I do not agree that the records at issue here are compiled in the course of investigation of a crime, however, the Indiana Court of Appeals has acknowledged that certain law enforcement manuals – specifically prosecution manuals – are deliberative materials that are used for decision-making purposes. *See Newman v. Bernstein* 766 N.E. 2d. (2002). While that case did not specifically cite to SOP police procedures,

it stands to reason they are similar enough to analogize. Indeed, as the Department argues, those procedures are internal processes used to investigate, apprehend, and arrest criminals. If public inspection were permitted, it may compromise the efficacy of those protocols.

In the context of another type of lawsuit or proceeding, these records may be discoverable through another type of mechanism, but I agree with the Department that it retains the discretion to disclose or withhold these records under APRA.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Wabash Police Department has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor