
OPINION OF THE PUBLIC ACCESS COUNSELOR

LOUIS P. FROMER,
Complainant,

v.

WEST LAFAYETTE POLICE DEP'T.,
Respondent.

Formal Complaint No.
17-FC-204

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to formal complaints alleging the West Lafayette Police Department (“WLPD”) violated the Access to Public Records Act¹ (“APRA”). WLPD responded via Captain Mike Francis. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received by the Office of the Public Access Counselor on August 17 and September 5, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Louis P. Fromer (“Complainant”) filed six (6) formal complaint alleging that the WLPD violated the Access to Public Records Act by wrongfully denying him a copy of requested public records and failing to respond to some of his requests. Some of these complaints were filed prematurely, and the Complainant resubmitted those complaints per my Office’s instructions. One of these complaints was addressed in a letter to the Complainant and is therefore not referenced in this Opinion. This Office consolidated the remaining five (5) complaints as they alleged similar public access issues and were all filed against the same agency. I will address the five (5) complaints collectively.

In July 2017, the Complainant submitted five requests to the WLPD. Four requests were sent on or around July 20. The requested records included records related to a cell phone confiscated as evidence, a copy on disk of an audio/video statement, documentation of the time and date that the Complainant was detained and taken into custody, audio/video recording of the transport of Complainant in a police vehicle on a particular date, several documents related to his probable cause hearing, and copies of warrants. The Complainant alleges that the WLPD did not respond to two of his requests. The Complainant further alleges that some of his requests were improperly denied because he either did not have the opportunity to inspect the requested records during the discovery process, or he did not receive the requested records from a 2016 duplicate request as WLPD claimed. The Complainant conceded that some of his requests should have been directed to the appropriate court,

but contests the WLPD's assertion that the prosecutor's office, not WLPD, would possess the probable cause documents.

My Office notified the WLPD of the complaint on August 25, 2017. The WLPD responded on August 31, 2017, via Captain Mike Francis. The WLPD responded that some of the documents that the Complainant requested, such as records related to the Complainant's probable cause hearing, are not maintained by the WLPD and that the WLPD has directed the Complainant to submit such requests to the appropriate agencies. The WLPD further noted that the Complainant has made repeated requests for records that he was presented during his trial discovery and provided in 2016 as a part of a records request.

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 West Lafayette 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 WLPD's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. 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 5-14-3-8(e)(2) provides that if the public agency that possesses the record has reasonable access to a copy machine, the agency must provide at least one (1) copy of the record to the requestor. I opined in 15-FC-138 that this statute should be interpreted as to mean one (1) copy per year *within reason*. In 15-FC-170, I opined that my “Office recognizes documents get misplaced or lost. This problem can be exacerbated by prison policy and security as well.” While the parties disagree as to whether the Complainant received some of the requested records pursuant to a records request in 2016 and whether the Complainant had the opportunity to inspect some of the requested records during the trial discovery process, it is my opinion that the WLPD should make a reasonable effort to provide another copy of records responsive to the Complainant’s request that the WLPD possesses.

Regarding the WLPD’s alleged lack of response to two of the requests, it appears that the Complainant sent those requests with a third request, and the third request received a response. The response included a reference to “other documents from [Complainant’s] trial.” The two requests were for audio recording from transporting the Complainant and documentation related to the Complainant’s detention. Based on the WLPD’s response to the request, it seems that the WLPD did respond to those requests by referencing “other documents from [Complainant’s] trial,” and declined to provide copies because it was a duplicate request from 2016 and was available for inspection during discovery.

Again, I recommend that the WLPD provide another copy as reasoned above. However, it appears that the WLPD did

respond to the requests and I decline to find a violation of the APRA regarding that matter.

It is also my recommendation to the Complainant that if he chooses to submit separate requests for individual documents, the Complainant should consider either consolidating the requests into one letter with an itemized list of requested items, or space out the individual records requests if the requests are not time-sensitive. It is difficult to follow multiple requests submitted at once in different letters, and that might account for the confusion as to whether the WLPD had responded to two of the Complainant's requests.

Finally, I recommend the Complainant submit his requests for probable cause records and warrant records to the appropriate prosecutor's office and/or clerk of court as suggested by the WLPD.

RECOMMENDATION

For the foregoing reasons, it is my Recommendation that the West Lafayette Police Department make a reasonable effort to provide another copy of records responsive to the Complainant's request that are in the WLPD's possession.

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

Luke H. Britt
Public Access Counselor