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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JULIANNA L. CLARK,  
*Complainant,*

v.

WARRICK COUNTY ANIMAL CONTROL,  
*Respondent.*

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Formal Complaint No.  
17-FC-261

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Warren County Animal Control (“WCAC”) violated the Access to Public Records Act<sup>1</sup> (“APRA”). Attorneys Andrew E. Skinner and Todd I. Glass filed a response to the complaint on behalf of the WCAC. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on November 21, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## **BACKGROUND**

Julianna L. Clark (“Complainant”) filed a formal complaint alleging WCAC violated APRA by wrongfully denying her access to public records.

On October 12, 2017, Clark submitted a public records request to WCAC to inspect or copy, in relevant part, the following:

[P]ublic records that have been accumulated about me, my family, my dogs, or my home by your department as a result of complaints or inquiries from my neighbors, Charles and Mary Schaffer...

WCAC denied Clark’s request, stating—without citing statutory authority—that the requested items are “part of an investigatory file.” Clark believes any investigation would be complete.

In its response, the WCAC sets forth several arguments in its defense. WCAC argues the animal control department is a law enforcement agency, which enjoys the benefit of discretion when determining which records to produce and withhold pursuant to Indiana Code section 5-14-3-4(b)(1). It additionally contends that public policy considerations support its decision to withhold documentation regarding animal complaints.

## **ANALYSIS**

The Access to Public Records Act (“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. There is no dispute that Warrick County Animal Control (“WCAC”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(n). Therefore, unless an exception applies, any person has the right to inspect and copy the WCAC’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

WCAC argues that it has discretion to withhold the requested records under Indiana Code section 5-14-3-4(b)(1) because it is a law enforcement agency and the records at issue are investigatory records.

It is true, that APRA empowers law enforcement agencies with the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). Here, a key issue is whether WCAC is a law enforcement agency for purposes of APRA. Under APRA, law enforcement agency means:

an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff’s department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.

Ind. Code § 5-14-3-2(p). This Office has long regarded this definition to be non-exhaustive, instead employing a functional equivalency test for law enforcement agencies. *See Opinion of the Public Access Counselor*, 14-FC-239 (2014). Therefore, if an agency wields the powers of a traditional law enforcement agency, it could ostensibly rise to the level of the definition. In 14-FC-239 example, this Office considered the Notre Dame Security Police to be the functional equivalent of a public law enforcement agency; and thus, a law enforcement agency for purposes of APRA. The Indiana Supreme Court disagreed, holding, in part, that although the NDSP carried firearms and badges, drove marked cars, had arrest powers had on-and-off-campus jurisdiction and held themselves out to a law enforcement agency, a functional equivalency test would not be applied because the police powers it exercised were not expressly derived from a governmental agency. *See ESPN v. Notre Dame*, 62 N.E.3d 1192 (2016).

In this case, the WCAC has not cited any authority granting the department express law enforcement powers. It is a regulatory and investigative agency, but not law enforcement in the traditional sense.<sup>2</sup>

Presumptively, routine animal control activities do not involve circumstances rising to the level of criminal activity. Not to diminish the work of animal control personnel – it is well recognized the good and difficult work they do – but it

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<sup>2</sup> According to Warrick County Ordinance Title XIII, Chapter 131, Section 01, the Animal Control Officer is appointed by the County Health Officer.

is distinguished from traditional law enforcement by its nature and purpose.

Under APRA, investigatory record means “information compiled in the course of the investigation *of a crime*.” Ind. Code § 5-14-3-2(i) (Emphasis added). Therefore, investigatory records only relate to criminal investigations. While a Warrick County ordinance violation carries potential penalties in terms of fines (See Warrick County Ordinance Title XIII, Chapter 131, Section 99), the violations are infractions. Ind. Code § 35-31.5-2-75 defines “crime” as a felony or misdemeanor. Therefore, by the plain meaning of the statute, an infraction is not a crime.

There is no investigatory record exception under the APRA for investigations of an infraction. Even if the complaints received by WCAC could be considered investigatory by a law enforcement standard, then they would be disclosable nevertheless because it is not pursuant to the investigation of a crime, but rather an infraction.

Furthermore, if the WCAC were to consider itself a law enforcement agency, it would be required to develop and maintain a daily log pursuant to Indiana Code section 5-14-3-5. This log would contain much of the information requested by the Complainant. While the Respondent’s policy argument is well-received and recognized, complainants of animal abuse do not enjoy any privacy protections if a public record exists documenting their identity.

**RECOMMENDATION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Warrick County Animal Control must release the requested public records.

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

Luke H. Britt  
Public Access Counselor