



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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## OPINION OF THE PUBLIC ACCESS COUNSELOR

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DANIEL KENT,

Complainant

v.

INDIANA STATE POLICE

Respondent

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17-FC-30

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### ADVISORY OPINION

March 22, 2017

This advisory opinion is in response to the formal complaint alleging the Indiana State Police (“ISP”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-1.5-1 et. seq. ISP responded on February 23, 2017 via Ms. Cynthia Forbes, Legal Counsel. 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 February 9, 2017.

### BACKGROUND

The formal complaint dated January 9, 2017 alleges ISP violated the APRA by failing to produce a police report related to a police action shooting. On February 3, 2017, the Complainant left a voicemail requesting a case report for a police action shooting investigation. On February 7, 2017, the voicemail was returned, but he was unavailable, therefore the Respondent initiated email correspondence. The Respondent informed the Complainant the request for a full case report was denied as an investigatory record and the filing of charges is not determinative to the nature of the investigation. Furthermore, the Respondents informed the Complainant ISP does not release criminal investigations under APRA requests.



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## 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 Indiana State Police 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 ISP’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)*.

An investigatory record is “information compiled in the course of the investigation of a crime.” *See Indiana Code § 5-14-3-2(h)*. The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 16-FC-155*.

ISP argues the matter involved a criminal investigation. The very fact it was presented to a grand jury for a determination is indicative of the suspicion of criminality. Therefore, it is no question whether the record is investigatory as contemplated by the APRA. That being said, a blanket invocation of the investigatory records exception leans against notions of transparency and openness. While the Courts have interpreted the exception broadly, its use should be applied judiciously and not arbitrarily. *See Ind. Code § 5-14-3-9(g)(2)*. An arbitrary or capricious action disregards facts and context and lacks a basis which would lead a “reasonable and honest” person to the same conclusion. *Hetzl v Thomas* 516 N.E.2d 103, 106 (Ind. App 3 Dist. 1987).

Generally, it is beyond the scope of this Office to determine whether a law enforcement determination to withhold documentation is arbitrary. And so it is in this case. Based on the information provided, it is impossible to ascertain whether the circumstances of the investigation warrants the invocation of the investigatory records exception. Common factors in this equation are: a danger to public safety, jeopardizing an expectation of privacy or compromising an ongoing investigation. If the information requested would not threaten one of these considerations it should be released. This is especially so when cases are closed and the information could provide closure to families of those involved.



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Therefore, I respectfully request ISP revisit this matter to determine if one of these factors (or other similar considerations) justifies exercising the exemption. If so, then it should certainly withhold the information. If not, additional documentation should be released.

Please do not hesitate to contact me with any additional questions.

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Public Access Counselor

Cc: Ms. Cynthia Forbes, Esq.