
OPINION OF THE PUBLIC ACCESS COUNSELOR

STEVEN J. PORTER,
Complainant,

v.

INDIANA WESLEYAN UNIVERSITY POLICE DEPT.,
Respondent.

Formal Complaint No.
19-FC-22

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Indiana Wesleyan University police department violated the Access to Public Records Act.¹ University Counsel Shawn L. Matter filed an answer on behalf of the department. 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 March 4, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute over private university police department records.

On February 4, 2019, Indiana Wesleyan University's campus police responded to a report that an IWU student made threats to harm other students living on campus. After investigating the report, a campus police officer arrested the student for intimidation.

On February 7, 2019, Steven J. Porter ("Complainant") filed a public records request seeking digital copies of the following records:

1. Any record listing the name, age, address, charging information, and circumstances that led to the arrest of one or more individuals (including Sparks) on or near IWU's Marion campus on or about February 4, including but not limited to the time and location of the incident, the name of the investigating and arresting officer(s), and the names of all law enforcement agencies involved;
2. Information pertaining to the arrestee's detention in jail, including the time and date the person was received/booked and discharged/released, bond amount, and any and all reasons for the arrestee being placed into jail; and
3. Any and all information recorded in the agency's daily log of suspected crimes, accidents, or complaints, including the time, substance, and location of complaints or requests for assistance pertaining to the aforementioned arrest, the time and nature of the agency's response, the name and age of any victim (unless the victim is a victim of

a crime under I.C. 35-42-3), and a general description of any injuries, property, or weapons involved.

Porter noted in his request that he had previously made a similar request to the Grant County Sheriff's Office, and the office directed him to make the request to the IWU Campus Police because it is a separate and distinct law enforcement agency from the GCSO.

IWU denied Porter's request on February 15, 2019. The university asserted that the requested records are not subject to disclosure under the Access to Public Records Act.

That same day, Porter followed up with IWU by email with questions to clarify the university's denial. Five days later, IWU responded by stating that "all records created by IWU's Campus Police are created for other institutional uses and are not created solely for law enforcement reasons."

On March 1, 2019, Porter filed a formal complaint with this office disputing IWU's denial. In essence, Porter asserts that IWU's blanket denial of his request is at odds with Indiana Code Section 5-14-3-2.2, which governs access to private university police department records. Although Porter acknowledges that the IWU campus police may have authority to withhold some of the records he requested from disclosure, he argues its categorical denial of his request is impermissibly broad under the relevant statute.

On April 3, 2019, IWU filed an answer to Porter's complaint denying that it violated APRA. First, IWU contends that its campus police department created the report for a student

conduct purpose, and not solely for a law enforcement purpose, so the report is not a disclosable public record under APRA.

Next, IWU says even if the report is a public record, the university is prohibited from disclosing the report under Indiana Code Section 5-14-3-4(a)(3) because the report is confidential under the Family Educational Rights and Privacy Act of 1974 (“FERPA”).

Finally, IWU argues that the report is an investigatory record of a law enforcement agency, which means it has discretion under APRA to withhold the record from disclosure.

ANALYSIS

This complaint presents an issue of first impression to this office.

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

There is no dispute that APRA applies to private university policy departments. *See* Ind. Code § 5-14-3-2(q)(11).

“Private university police department” means:

[T]he police officers appointed by the governing board of a private university under IC 21-17-5.

Ind. Code § 5-14-3-2(o). Indiana Wesleyan University (“IWU”) is a private university with its own police department, which the university established in accordance with Indiana Code Section 21-17-5. Thus, IWU’s campus police department is subject to APRA.

As a result, certain records of IWU’s campus police department are public records and must be made available for inspection and copying in accordance with Indiana Code Section 5-14-3-2.2.

2. Private University Police Records

Under APRA, the following records of a private university police department are public records and subject to disclosure under the Act:

(1) A record created or received after July 1, 2016, by a private university police department, to the extent the record:

(A) is created solely for a law enforcement purpose; and

(B) relates to arrests or incarcerations for criminal offenses.

(2) A record that is created in compliance with 20 U.S.C. 1092 and 34 CFR 668, to the extent that public access is required under federal law.

The name of a crime victim must be redacted, unless release of the name is authorized by the crime victim.

Ind. Code § 5-14-3-2.2. It is worth mentioning, as a preliminary matter, that this office—like our courts—will interpret a statute when an ambiguity exists.

In this case, this office is not convinced an ambiguity exists, however, since this is an issue of first impression it makes sense to offer some interpretive guidance on this provision of APRA.

Notably, certain elements must be present to make a particular private university police department record a public record subject to disclosure under subsection (a)(1).

2.1 Created or Received after July 1, 2016

The threshold consideration for determining whether a record of a private university police department is a public record that's disclosable under APRA is the date of the record's creation by or receipt by the department.

Under APRA, the record must be created or received after July 1, 2016, to be subject to APRA. Ind. Code § 5-14-3-2.2(a). If, however, the creation or receipt of a record precedes July 1, 2016, then the analysis ends because the record is not a public record and APRA does not apply.

Although it is not entirely clear exactly what record or records the two sides are debating, there is no dispute that the requested records came into existence after July 1, 2016.

As a result, this element of the statute is satisfied.

2.2 Created Solely for a Law Enforcement Purpose

Another important consideration here is the purpose of the record's creation. A record of a private university police department is a public record and subject to APRA to the extent the record is "created solely for a law enforcement purpose." Ind. Code § 5-14-3-2.2(a)(1).

"Law enforcement purpose" is not defined under APRA and there are no state appellate cases interpreting the term for purposes of APRA.

Here, IWU argues that all records created by its campus police are created for other institutional uses and are not created solely for law enforcement purposes.

This office disagrees.

Although the legislature did not provide statutory definitions, the plain language of the statute does not support IWU's interpretation.

The upshot of adopting IWU's interpretation would be to render part, if not all, of the statute meaningless. When our courts engage in statutory interpretation they "avoid an interpretation that renders any part of the statute meaningless or superfluous." *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1199 (Ind. 2016).

So too is the case here. If a private university police department can short circuit the legislature's intent by claiming a non-law enforcement use, it defeats the purpose of the law.

In this case, a campus police officer arrested an IWU student for intimidation, which is a criminal offense under the Indiana Code. The records created by the arresting officer incident to the arrest—regardless of name—are created solely for a law enforcement purpose; and thus, are public records subject to disclosure under APRA.

An arrest record is not education records or institutional records, but rather are created solely for a law enforcement purpose (e.g., documenting the arrest of person for a criminal offense).

To the extent that IWU *uses* its police department's records for some non-law enforcement purpose such as the enforcement of the university's rules and regulations does not change the purpose of the record's creation. Usage and creation are mutually exclusive constructs. Mere usage for an institutional purpose does not render its creation as a criminal enforcement measure institutional.

2.3 Relates to Arrests or Incarcerations for Crimes

In addition to being created solely for a law enforcement purpose, a private university police department record must also “relate to arrests or incarcerations for crimes.”

Put differently, a record must be connected with or be about an arrest or incarceration, or both. This incident involved the arrest of a student for a criminal offense by an officer of a duly appointed police force. Documentation related to such is a law enforcement activity.

We do not have secret police in Indiana, even on private university campuses.

By its own admission the IWU campus police are more than security guards that help out students with lock-outs and serving as genteel cross-campus escorts. On the contrary, it has the power to investigate, arrest, detain, and use appropriate force.

Granted, this matter may have ultimately resulted in the administration taking disciplinary action against the student, however, it began as a criminal matter. It matters not if institutional action was subsequently carried out. Undoubtedly, those records created in the furtherance of administrative or institutional pursuits would be separated and withheld, but not the records created as a result of the underlying law enforcement activity.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Indiana Wesleyan University Campus Police Department violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the right.

Luke H. Britt
Public Access Counselor