
OPINION OF THE PUBLIC ACCESS COUNSELOR

DAVID E. LOWE,
Complainant,

v.

CORYDON POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
20-FC-101

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Corydon Police Department violated the Access to Public Records Act.¹ Chief Matthew Kitterman filed a response with this office. 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 July 28, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the release of personnel records of the Corydon Police Department (“CPD”).

On July 9, 2020, David Lowe (“Complainant”) filed a public records request with Treggie King, the Town of Corydon Clerk-Treasurer seeking the following:

A roster of sworn police department personnel including name, rank, and unit assignment (e.g. patrol, narcotics, traffic, etc.)

That same day, Ms. King acknowledged the request and informed Lowe that she could only provide names and ranks, and that unit assignments would need to be provided by CPD Chief Matthew Kitterman. On July 10, 2020, Chief Kitterman denied Lowe’s request, asserting that the records were exempt from disclosure. The chief further explained that due to the hostile atmosphere surrounding the law enforcement community he did not feel it would be prudent to release any information regarding the officers employed by the department or its operating capabilities.

Lowe then filed a formal complaint with this office arguing that Chief Kitterman’s denial did not align with any of the exceptions to disclosure outlined in the Access to Public Records Act. Furthermore, he noted that he had filed five other records request that were identical to the one he submitted with the CPD and they were the only department to flatly deny the request.

On July 30, 2020, Chief Kitterman responded to Lowe’s complaint, citing Indiana Code 5-14-3-4.4(b), which states that a public agency may deny the disclosure of a record so

long as the agency “provide[s] a general description of the record being withheld and of how disclosure of the record would have a reasonable likelihood of threatening public safety by exposing vulnerability to terrorist attack.” According to Kitterman, release of the names, ranks, and unit assignments of CPD officers would potentially allow someone to “... locate the officer’s home addresses in order to target the officers and their families,” a situation which he believes to be plausible given the current atmosphere surrounding law enforcement. Therefore, CPD denied Lowe’s because the release of requested material would have a reasonable likelihood of threatening public safety by exposing a vulnerability to a terrorist attack.

ANALYSIS

The key issue in this complaint is whether the Corydon Police Department had authority under the Access to Public Records Act to deny access to a roster of law enforcement personnel.

The short answer is yes, but not for the reasons cited by the CPD.

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.

The Access to Public Records Act (APRA) says “(p)roviding persons with information is an essential function of a repre-

sentative 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 the Corydon Police Department (CPD) is a public agency for the purposes of the APRA; and thus, subject to the law’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and copy the Department’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b).

This case involves the application of APRA’s public safety and personnel provisions.

2. Personnel records of law enforcement agencies

APRA gives public agencies the discretion to withhold certain personnel records from public disclosure. Ind. Code § 5-14-3-4(b)(8). The records Lowe requested fall directly into that category.

The law provides additional discretion to withhold law enforcement personnel information from “an offender, an agent, or a relative of an offender.” *See* Ind. Code § 5-14-3-4(b)(23). It does not generally, however, make personnel information exempt from the public at large.

The CPD attempts to broaden another exception to fit the request, however, citing public safety reasons under Indiana Code section 5-14-3-4.4. Notably, section 4.4(b) only speaks to procedure for withholding information under Indiana

Code section 5-14-3-4(b)(19). This subsection is solely concerned with vulnerability to terrorist attacks, which is not a catchall public safety term. Terrorism is expressly defined in Indiana Code by predicating acts on the use of weapons of mass destruction.² It is unlikely that the release of a police department's roster, without more, would invite the types of terrorist attacks contemplated by the Indiana General Assembly.

What is clear, is that the law is not interpreted through the lens of current events or the zeitgeist. This is not to say this office is dismissive of the chief's concerns of officer harassment but the APRA does speak to this in other ways.

Again, the law only speaks to personnel information of officers in terms of an offender request and not the public at large.

Two other statutes are more appropriate for a denial of the request. First, Indiana Code section 5-14-3-3(f) prohibits the use of lists of public employees for political purposes. This statute also limits the access to lists of employees to inspection alone and not copying.

Second, referring back to the personnel records exemption in Indiana Code section 5-14-3-4(b), a request is prohibited which seeks groups of employees like a roster. Information requests must be particularized by employee name.

Therefore the denial of the information was not a violation of the law, but the citations were applied incorrectly.

² Ind. Code § 35-46.5-2-1.

CONCLUSION

It is the opinion of this office that the Corydon Police Department did not violate the Access to Public Records Act, but should have been more precise with its application of the exceptions to disclosure.

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

Luke H. Britt
Public Access Counselor