
OPINION OF THE PUBLIC ACCESS COUNSELOR

BRYAN WOLFE
Complainant,

v.

LOGANSPORT POLICE DEPARTMENT
Respondent.

Formal Complaint No.
20-FC-163(b)¹

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Logansport Police Department (LPD) violated the Access to Public Records Act.² The LPD did not file a response despite several invitations to do so. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion

¹ 20-FC-163(a) filed by the complainant involved a separate public entity and was handled by letter

² Ind. Code § 5-14-3-1-10.

to the formal complaint received by the Office of the Public Access Counselor on November 23, 2020.

BACKGROUND

This case involves a dispute over the fee the Logansport Police Department charges for access to crash investigation photos.

On November 10, 2020, Bryan Wolfe (Complainant) contacted the Logansport Police Department (LPD) to inquire about the cost of obtaining crash investigation photos. The LPD informed Wolfe the fee was \$5.00 per photo. The department's website confirms the fee.

As a result, Wolf filed a formal complaint with this office the same day. He argues that the LPD's fee is excessive and in violation of the Access to Public Records Act (APRA).

This office provided the Logansport Police Department with notice of the complaint through standard mail, email, and by telephone.

LPD did not respond.

ANALYSIS

1. The Access to Public Records Act

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. The Logansport Police Department is a public agency for

purposes of APRA; and therefore, subject to the law's requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the LPD's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a); -(b).

Notably, this case does not involve one of these exceptions, but rather the fees associated with disclosure.

2. Fees for copies of photos

Under APRA, if copies of the photos in question are in electronic form, an agency may charge direct cost of producing them.

Direct cost means:

... one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

Ind. Code § 5-14-3-2(d). Plainly speaking for this case, direct cost would entail the time for an officer to drag-and-

drop these photos from a software program onto a flash drive or CD. In contrast to video footage from a body worn camera, for example, both of these costs would be negligible and certainly not five-dollars-worth of production.

Every department is different and there is no standard for the direct cost of providing crash investigation photos, but it stands to reason it is not so much to be a barrier to access or a profit-making measure.

Public access to LPD information is part and parcel of the department's duties and not an add-on expense to the public. It may recoup its costs, but no more.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Logansport Police Department is charging fees significantly in excess of the direct cost of providing them in violation of the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor