

OPINION OF THE PUBLIC ACCESS COUNSELOR

SAMANTHA SNUKIS & KRISTI CHANLEY,
Complainant,

v.

EVANSVILLE POLICE DEPT.,
Respondent.

Formal Complaint No.
20-FC-22 & 23 (consolidated)

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to formal complaints alleging that the Evansville Police Department violated the Access to Public Records Act.¹ Legal counsel Dirk H. Stahl, filed an answer on behalf of the department. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion

¹ Ind. Code § 5-14-3-1-10.

to the formal complaint received by the Office of the Public Access Counselor on February 11, 2020.²

BACKGROUND

This case involves disputes about the applicability of the investigatory records exception under the Access to Public Records Act (APRA).

On December 23, 2019, attorney Mark E. Miller, on behalf of Samantha Snukis and Kristi Chanley (Complainants), filed an in-person a public records request with the Evansville Police Department (EPD) seeking “all documents and things related to the events occurring on September 13, 2019, including but not limited to the following:”

1. Law enforcement reports and supplements, including all Incident/ Investigation Reports
2. Names and addresses of persons interviewed
3. Written and recorded statements of persons interviewed
4. Photographs, video and audio recordings
5. Physical evidence obtained
6. Security camera footage
7. Scientific, technical, and lab reports
8. CAD Reports
9. 911 recordings and transcripts
10. Car to car recordings and transcripts
11. Information gathered in connection with any investigation related to the death of [Complainants’ deceased relatives],

² This office consolidated the complaints based on commonality of the request, agency responses, and the representation of counsel. Both complainants have standing to file with this office and any subsequent action should recognize the filing as sufficient by both parties.

including but not limited to any internal or external investigations

Miller also requested copies of body and vehicle camera footage for the officers involved in both incidents.

On January 13, 2020, the EPD responded to the records requests denying a portion of them by invoking APRA's investigatory records exception.

EPD informed Miller that a request for certain items should be sent to the Evansville-Vanderburgh County Central Dispatch Center since that is the agency is responsible for maintaining such records.

Regarding the requests for body and vehicle camera footage, the EPD indicated it would provide Miller copies of the footage, however, the records would require the department to obscure certain images in accordance with Indiana Code section 5-14-3-5.2(e)(1)(i) before disclosure.

On February 4, 2020, Miller reached out to the EPD requesting the status of the production of the body and vehicle camera footage. In this email Miller also asked EPD to identify the "crime" that was being investigated, thus allowing the EPD to utilize the investigatory records exemption.

As a result, Miller filed separate formal complaints on behalf of Snukis and Chanley with this office on February 11, 2020.

Miller argues that the EPD incorrectly applied the investigatory records exception to the records requests, since the denial failed to offer any evidence that the department compiled the requested records in the course of the investigation of a crime.

On March 10, 2020, EPD filed an answer to the formal complaint.

EPD contends that both cases involved an element of investigation into criminality. Officers responded in both cases to behavior consistent with intoxication. Both outcomes were tragic, resulting in the death of the individuals being investigated—one due to an overdose while in custody and the other as a result of a police action shooting. The factual circumstances, by EPD’s estimation, justify the invocation of the investigatory records exception.

Notably, EPD contends that it did not deny access to the body camera footage. EPD merely cites some growing pains in using the software to redact the footage consistent with the statute. EPD also asserts its intention to provide the footage when this process is complete.

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 Evansville Police Department (EPD) is a public agency for purposes of APRA; and therefore, subject to its 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 EPD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Investigatory records exception

APRA provides law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). There is no dispute that EPD is a law enforcement agency for purposes of the investigatory records exception. Ind. Code § 5-14-3-2(q)(6). That means EPD has discretion to withhold the agency’s investigatory records from public disclosure.

APRA defines “investigatory record” as “information compiled in the course of the investigation of a crime.” Ind. Code § 5-14-3-2(i). In other words, “if there is no criminal investigation, the documents cannot be withheld at [the agency’s] discretion pursuant to the investigatory records exception.” *Scales v. Warrick County Sheriff’s Department*, 122 N.E.3d 866, 871 (Ind. Ct. App. 2019).

Although APRA does not define “crime,” our criminal code defines the term to mean “a felony or a misdemeanor.” Ind. Code § 35-31.5-2-75.

Based on recent conversations with law enforcement officials, the *Scales* case has caused some amount of consternation. True enough, the courts recognized a key

prepositional phrase of the statute: “of a crime.” This, however, is not an impediment to using the investigatory records exemption, only that the courts seemingly require law enforcement to be judicious in their application of the statute.

And so it is with EPD. Under APRA, its burden of sustaining a denial is predicated upon a measure of “adequate specificity and not by relying on a conclusory statement.” *See* Ind. Code § 5-14-3-9(g)(1)(B).

All too often a law enforcement agency will summarily dismiss a request because it surmises that the investigatory records exception is so broad as to encompass every aspect of documented law enforcement activity. This is inconsistent with the spirit of the law. While broad, the application of discretion must not be arbitrary or capricious. It must be based on a good faith application of the statutory exception.

“An agency’s action is arbitrary and capricious if it is “without consideration or [is] in disregard of the facts and circumstances of the case, and it must be without some basis which would lead reasonable and honest people to the same conclusion.” *Heltzel v. Thomas*, 516 N.E.2d 103, 106 (Ind. Ct. App. 1987).

This is where EPD gets it right.

A dismissive blanket assertion would have resulted in a finding of a violation by this office. Instead, EPD goes to sufficient lengths to demonstrate a measure of thoughtfulness as to why it feels the exception applies. Seemingly, it states an argument that is reasonable and honest.

The facts and circumstances set forth by EPD are consistent with investigations into suspected criminality. The cases need not be adjudicated in a court or even darken a prosecutor's door in order to be considered a criminal investigation. But the circumstances must have at least a hue of alleged lawbreaking. The nature of the facts at hand contain those shades and the EPD properly applied the exception.

3. Law enforcement recordings

A portion of both requests involve law enforcement recordings (e.g., body camera footage; dash camera footage). APRA addresses law enforcement recordings under Indiana Code sections 5-14-3-5.1 to 5.3.

Specifically, section 5.2(e)(1) requires law enforcement to obscure certain images. Video editing requires some amount of technology and technological savvy to accomplish. That stated, it takes time to mount that learning curve. EPD only began its body worn camera program in 2019. A reasonable delay is to be expected for departments who are new to that process and getting its legs underneath it.

Critically, EPD concedes these points and does not deny the request based on the difficulty of redaction. It merely—and reasonably—cites a delay for producing the properly obscured footage.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Evansville Police Department did not violate 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