
OPINION OF THE PUBLIC ACCESS COUNSELOR

TRACI L. MILLER,
Complainant,

v.

INDIANA STATE POLICE,
Respondent.

Formal Complaint No.
20-FC-25

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana State Police violated the Access to Public Records Act.¹ Legal counsel Barbara L. Rosenberg filed an answer on behalf of ISP. 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 February 21, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about the scope of daily log required of law enforcement agencies under the Access to Public Records Act (APRA).

On February 5, 2020, Traci L. Miller, a reporter with the *Herald Bulletin*, filed a request with the Indiana State Police seeking the opportunity to inspect or obtain copies of the agency's daily log or record listing suspected crimes, accidents, or complaints in accordance with the APRA. Miller also included the relevant statutory provision in the request. Miller also noted the request "is on a daily basis and is in the public interest."

ISP responded to Miller later that day stating the agency does not maintain the sort of record she requested; and thus, there were no documents responsive to the request.

Miller followed up with ISP within a couple of hours. Miller again referenced the relevant language under Indiana Code section 5-14-3-5(c), which requires law enforcement agencies to maintain a daily log or record that lists suspected crimes, accidents, or complaints. Miller also asked if ISP was exempt from APRA's daily log provision, and if so, asked the agency for the exemption.

On February 6, 2020, ISP followed up with Miller. ISP again stated that it does not maintain the exact record that Miller requested in the original request. The agency indicated that it maintains a daily log for each incident.

ISP offered to run a report for Miller that would contain most of the information in the agency's daily logs. ISP noted

that Miller would then be able to request individual computer aided dispatch (CAD) information. ISP also invited Miller to provide dates and times for the records she requested.

ISP concluded by informing Miller that the agency does not recognize standing records requests; and thus, she would need to make a request each day or week for the information she seeks. ISP noted that the agency has a 21 day turnaround time for most requests.

As a result, Miller filed a formal complaint with this office on February 21, 2020, alleging ISP improperly denied her access to public records under APRA. Miller asserts that ISP neither provided the daily log for the date requested nor did the agency indicate how she could inspect the records.

Essentially, Miller argues that ISP's approach to providing the daily log information is contrary to APRA. Specifically, Miller takes exception to ISP's turnaround time to inspect or copy the daily log required by APRA. Miller relies on a previous opinion² from this office to support her argument that an agency must automatically provide the daily log within 24 hours of after law enforcement receives the report of an incident.

On March 12, 2020, ISP filed a response to Miller's complaint denying the agency violated APRA. First, ISP argues that Miller's initial request was not reasonably particular—a requirement under APRA—because she did not indicate the specific date and time for the daily log she wanted.

² *Opinion of the Public Access Counselor*, 12-FC-216 (2012).

Second, ISP argues that Miller misreads APRA's daily log provision. Specifically, ISP contends that nothing in APRA requires a law enforcement agency to provide the daily log information for inspection and copying within 24 hours.

Instead, ISP asserts that APRA only requires an agency to *create* the daily log within 24 hours, which ISP says it does through the agency's CAD detail page and RMS media summaries.

ANALYSIS

The issue in this case is what constitutes a reasonable time under the Access to Public Records Act for an agency to provide a public record when the agency is required by law to create the record within 24 hours of an event.

1. The Access to Public Records Act

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) 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 Indiana State Police (ISP) 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 ISP'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. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Daily log or record

APRA requires law enforcement agencies to create, maintain, and disclose a daily log or record that lists suspected crimes, accidents, or complaints that includes the following information:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved. Ind. Code § 5-14-3-5(c).

An agency must make the information available for inspection and copying in compliance with APRA. *Id.* The record

containing the information must be created within 24 hours after the suspected crime, accident, or complaint has been reported to the agency. *Id.*

Here, the gist of the parties' dispute is *when* ISP must disclose the daily log after receiving a request to inspect or copy it.

Essentially, ISP argues that APRA requires only the creation of the daily log within 24 hours, but not disclosure for inspection and copying within 24 hours. Instead, ISP asserts that requests for the daily log are treated like all requests for records, which subjects the requester to a possible wait time of 21 days for access.

When disputes like this arise under APRA, this office—like our courts—examines the statute as a whole, avoiding excessive reliance upon a strict literal meaning or the selective reading of individual words with the presumption that the legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals. *See 21st Amendment, Inc. v. Indiana Alcohol & Tobacco Comm'n*, 84 N.E.3d 691, 696–97 (Ind. Ct. App. 2017).

We know from APRA's preamble that the legislature's policy 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.

Moreover, the legislature expressly states that "[p]roviding persons with the 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. This chapter shall be liberally construed to implement this policy..." *Id.*

3. Reasonable time

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define "reasonable time."

Here, the parties disagree about whether ISP complied with APRA's reasonable time standard as it relates to a request for the daily log created in accordance section 5(c).

The determination of what is a reasonable time for production of records depends on the public records requested and circumstances surrounding the request. Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case

This office has long recognized that certain factors are relevant in evaluating whether an agency is in compliance with APRA's reasonable time standard.

These factors include but are not limited to the following: (1) the size of the public agency; (2) the size of the request; (3) the number of pending requests; (4) the complexity of the request; and (5) any other operational considerations that may reasonably affect the public records process.

This case is distinguishable because it involves a request for a public record that APRA requires the agency to create

within 24 hours. The framework of the requirement of Section 5 implies easy accessibility and convenience for a requester. If a daily log is maintained chronologically, it follows that a request for a single day should not be difficult to produce.

So, the issue is what constitutes a reasonable time to provide records that an agency must—by statute—create within 24 hours of an event.

4. Reasonable time to disclose a daily log

Indeed, this office consistently advises requesters and agencies that “reasonable time” is determined case by case.

A daily log is distinguishable because if an agency is following the law, there should be no searching, gathering, or reviewing the daily log. The process should be rather more expedient. Some law enforcement agencies maintain a physical binder with the daily log inside and make it available for review upon request. A department will simply insert pages from that day into a three-ring folder and its cumulative compilation satisfies the daily log.

It is true, as ISP argues, that APRA’s language specifically mandates the creation of daily log within 24 hours but not disclosure. Even so, this office is skeptical that our legislature would statutorily require law enforcement agencies to create a record within 24 hours, but not disclose those records for up to 3 weeks. That does not comport with the command of the statute.

Arriving at such a conclusion would require this office to do virtually the opposite of our statutory charge of liberally construing the law in favor of transparency.

For a log that must exist, hopefully in an organized chronological fashion, search time is next to nil and retrieval is a simple task. The records are already deemed to be unequivocally disclosable³, so no legal or administrative review is necessary.

One thing is clear, if a law enforcement agency complies with the statutory command of APRA and creates a daily log as required, a reasonable time would involve little to no waiting by the requester.

Since the law requires creation of the record within 24 hours, a reasonable time to provide that record should be no more than the time to create it. The APRA does not require many records to be created pursuant to its provisions, but this is one of them. In turn, they should be maintained in a manner which is easily accessible and requests should not be difficult to fulfill promptly.

³ Notably, law enforcement agencies enjoy broad discretion to withhold details of investigations and investigatory materials *save for* the items in the daily log. The level of detail in the log is another matter altogether and again, is scrutinized on a case-by-case basis.

CONCLUSION

As this is a matter of relatively first impression, this office declines to find a violation. Instead, it implores all law enforcement agencies to develop and maintain a daily log at its station or post in a manner consistent with easy retrieval and access. While immediate or standing access is not necessarily required, daily logs are the closest thing the law requires for real-time access upon demand.

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

Luke H. Britt
Public Access Counselor