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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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WILLIAM RAINSBERGER  
*Complainant,*

v.

INDIANA STATE POLICE,  
*Respondent.*

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Formal Complaint No.  
21-FC-126

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Luke H. Britt  
Public Access Counselor

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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.<sup>1</sup> ISP Legal Counsel Cynthia Forbes filed an answer on behalf of the agency. 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 August 30, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over the Indiana State Police's (ISP) application of the investigatory records exception under the Access to Public Records Act (APRA).

On July 22, 2021, William Rainsberger (Complainant) filed a public records request with the Indiana State Police seeking the following:

“... records from tests or investigations ISP performed, or may have performed, on certain evidence in criminal case.

The evidence was one handgun and some illegal drugs. The handgun was a Ruger LCP .380 with serial number 371659643. The drugs would have been in plastic bags, could have been any number from 1 to 5 of them, some containing marijuana, some containing a synthetic drug like K2.

The tests I request: Fingerprints, DNA, or any other tests on the handgun. Fingerprints and/or DNA on the plastic bags containing illegal drugs. Also, any tests done on the synthetic drugs to determine their (illegal) chemical content.

The timespan when ISP would have received the evidence was October 22, 2016, through January 17, 2018.

I'm 99% sure any evidence sent to ISP came the Elkhart County Sheriff's Office. The Elkhart Sheriff's Incident Number was 16005951.

The items were seized following arrests of two people on October 22, 2016. The two people arrested were Haven Chamberlin (sometimes spelled “Chamberlain”) and Kurtis Shorter. The case number for Chamberlin was 20D05-1610-CM-001819. Shorter had two

case numbers: 20D02-1610-F5-000271, 20D02-1801-F4-000002.”

Six days later, ISP denied Rainsberger’s request. ISP asserted that it does not use other agency case numbers or cause numbers; and thus, could not search for the records Rainsberger requested. At the same time, ISP noted that even if the agency conducted testing on behalf of the Elkhart County Sheriff’s Department or another agency, the resulting records would be excepted from disclosure as investigatory records under APRA.

On August 30, 2021, Rainsberger filed a formal complaint with this office. He argues that ISP’s denial of his request was arbitrary and capricious in violation of APRA.

Rainsberger rejects ISP claim that it is unable to search for the requested records because ISP does not use other agency case numbers or cause numbers. Rainsberger contends that he provided names, dates, case numbers, name of the arresting agency, and the make and serial number of the gun. He believes he provided ISP sufficient information to do a search.

Rainsberger also disputes ISP’s alternative claim that the requested records—if ISP searched for and located the records—would constitute investigatory records for purposes of APRA.

Rainsberger argues that ISP had no way of determining whether records were investigatory, “... because as they admitted, they ‘cannot search’ for the information I requested.”

Furthermore, Rainsberger asserts that since ISP never investigated the cases described in the request, they cannot

withhold records based on the investigatory records exception. He contends that ISP acted only as a laboratory to collect and process fingerprints and DNA from contraband.

Finally, Rainsberger argues that the records requested should be disclosed because pursuant to Indiana Code section 5-14-3-5(a)(2), which requires law enforcement to disclose information concerning any charges on which the arrest or summons is based.

On September 16, 2021, ISP filed an answer denying Rainsberger's claims.

First, ISP maintains that it cannot search for the requested records based on the information Rainsberger provided because the agency does not use the names of suspects, cause numbers, or the case numbers of other agencies when assisting only on laboratory analysis. Instead, ISP contends that it generates an agency laboratory number, which Rainsberger did not provide in the request.

Second, ISP again asserts that even if it conducted the testing, the related records would constitute investigatory records; and thus, excepted from disclosure under APRA at the discretion of ISP.

As for Rainsberger's assertions that ISP acted only as a laboratory to collect and process fingerprints and DNA from contraband, the agency contends the lab records are a direct result of that investigation and fall squarely within the definition of an investigatory record as outlined above.

Finally, ISP disputes Rainsberger's assertion that Indiana Code section 5-14-3-5(a)(2) requires disclosure of the rec-

ords he requested. ISP argues that this section is the minimum information that must be made publicly available, but it does not require substantiative investigatory records to be released. ISP also claims that Rainsberger’s application of the statute is an overreach to the extent that it is counter to the express language of APRA as it relates to investigatory records.

In sum, ISP maintains that the law grants the agency the discretion to withhold the requested records; and thus, ISP did not violate APRA in this case.

## 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 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 ISP’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

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

## **2. Reasonable particularity**

ISP argues that it cannot search for the requested records based on the information provided by Rainsberger. In other words, ISP claims it is incapable of searching for the records because Rainsberger did not provide an ISP-specific laboratory number with the request. Rainsberger disputes this claim.

Under APRA, a request to inspect or copy public records must identify with reasonable particularity the record being requested. Ind. Code § 5-14-3-3(a)(1).

The Indiana Court of Appeals held that “[w]hether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records. *Jent v. Fort Wayne Police Dep’t*, 973 N.E.2d 30, 34 (Ind. Ct. App. 2012).

Here, if ISP is incapable of searching for, locating, and retrieving the requested records without an agency-specific laboratory number, so be it, the request is not reasonably particular. If ISP can search for a record by any of the other information provided by a requester, the request is reasonably particular under APRA.

Regardless, the particularity issue is not the biggest obstacle in this case.

### **3. Investigatory records exception**

APRA gives a law enforcement agency the discretion to withhold the agency's investigatory records from public disclosure. *See* Ind. Code § 5-14-3-4(b)(1). Indeed, ISP is a law enforcement agency for purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6). That means ISP has discretion to withhold its investigatory records from public disclosure.

Under APRA, “investigatory record,” means “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 6 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 “crime” to mean “a felony or a misdemeanor.” Ind. Code § 35-31.5-2-75.

Based on the information provided, this office concludes that ISP properly applied the investigatory records exception in this case. Undoubtedly, Rainsberger is seeking records related to underlying criminal cases.

As an aside, Rainsberger makes compelling policy arguments by comparing APRA's investigatory records exception to the analogous provisions in the Freedom of Information Act (FOIA) and the open records laws of surrounding states.

Even so, APRA's standard is distinguishable from those statutes; and thus, this office must adhere to the governing law.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana State Police did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor