
OPINION OF THE PUBLIC ACCESS COUNSELOR

CLARISSA BOWMAN
Complainant,

v.

TOWN OF REMINGTON,
Respondent.

Formal Complaint No.
21-FC-53

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Remington violated the Access to Public Records Act.¹ Attorney Rebecca Goddard filed an answer on behalf of the Town. 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 May 17, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to police reports and law enforcement recordings.²

Although the complaint itself is difficult to follow, it appears as if on March 30, 2021, Clarissa Bowman (Complainant) filed a public records request with the Remington Town Manager seeking the following:

Remington Police Department Report Number RMPD21-0259 and body camera/ dash camera footage recorded on 3/12/2021, 3/13/2021, and 3/14/2021 belong to the individual with the Officer ID- REMRD7

The Town attorney acknowledged receipt of the request on April 9, 2021. Since that time, Bowman has not received any of the requested material and has not been granted the opportunity to review any of the requested footage.

She filed her complaint on April 9, 2021.

On June 7, 2021, the Town attorney submitted the Town's response to Bowman's allegations. The Town argues it is still in the process of reviewing the footage requested by Bowman, which apparently is part of an active criminal investigation and includes images of, and information pertaining to, a juvenile suspect. Therefore, the Town is working to see what portion of the footage need to be redacted and what can be disclosed to Bowman.

² Bowman provided additional material to this office after filing the initial complaint along with supplemental grievances. The addendum does not appear to raise any meritorious public access issues.

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. Town of Remington (Town) 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 Town’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. Requests for body camera footage

The crux of the initial dispute is whether the request by Bowman concerns body worn camera footage to which she is entitled to inspect or copy.

As of 2016, APRA contains three additional sections pertaining to law enforcement recordings,³ however, crucial definitions and rules are also in the law.

First, a request to inspect or copy a law enforcement recording must be in writing. *See* Ind. Code § 5-14-3-3(i). Bowman’s initial requests were oral; however, she did follow up in writing. As a result, the timing of this issue favors the Town insofar as the request was not made in writing until just prior to the filing of Bowman’s complaint.

Second, APRA is clear that a law enforcement recording is not an investigatory record. Therefore, a law enforcement agency’s discretion to withhold a record otherwise designated as investigatory is limited. *See* Ind. Code § 5-14-3-4(b)(1) (“[f]or purposes of this chapter, a law enforcement recording is not an investigatory record”).

While copying the actual record is another matter altogether, an individual depicted on in a law enforcement recording is guaranteed to view the footage at least twice pursuant to Indiana Code section 5-14-3-5.1(a)(1). If the individual is incapacitated, a legal guardian may view the footage in their stead.

Incapacity has a legal definition found at Indiana Code section 29-3-1-7.5. Although minors are not listed in the section explicitly, the definition is quite fungible and includes “any other incapacity.”

Black’s Law Dictionary defines “incapacity” as “1. [1]ack of physical or mental capabilities. 2. Lack of ability to have certain legal consequences attach to one’s actions.” Black’s Law

³ *See* Ind. Code §§ 5-14-3-5.1; 5.2; and 5.3.

Dictionary (11th ed. 2009). Minors would arguably fall into this category. Thus, it is the opinion of this office that legal guardians of minors depicted on law enforcement recordings may view the footage on behalf of their wards.

Accordingly, the law enforcement records exception to disclosure may not be used to prevent a legal guardian to view footage on behalf of individuals in their care who are depicted on that footage.

These statutes only pertain specifically to inspection of the footage and not copying. Law enforcement agencies do have broader discretion to withhold copies of the footage from a requester. Inversely, however, it also has the discretion to grant a request for copying.

As an aside, one of Bowman's grievances appears to be the cost of copies of footage. The materials provided indicate the Town's council set a \$125.00 fee for copies. Copies of body cam footage is statutorily capped at \$150.00 per copy. That is not a goal necessarily, but the limit of which can be passed on to a requester. Footage should be charged on a case-by-case basis depending on the actual cost of production and not a flat fee. If \$125 was charged, the Town would have to justify that cost by showing \$125 worth of work went into the production of the video.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Bowman should be allowed to inspect the body worn camera footage and any dash camera footage that may exist.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor