
OPINION OF THE PUBLIC ACCESS COUNSELOR

BILLY HALLER,
Complainant,

v.

GEORGETOWN POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
24-FC-52

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Georgetown Police Department violated the Access to Public Records Act.¹ Chief Travis O. Speece 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 July 9, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records related to a criminal incident.

On June 21, 2024, complainant Billy Haller submitted a public records request to the Georgetown Police Department (GPD) seeking records related to a named arrestee for an incident where the local high school basketball gym floor was vandalized. Haller was denied the record on June 24, 2024 as investigatory records.

Haller filed his complaint on July 9, 2024.

For its part, GPD submitted a response to the formal complaint on August 7, 2024 arguing that the records are investigatory and its denial was consistent with the law permitting the denial.

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 Georgetown Police Department is a public agency for the 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 GPD’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) to -(b). This case involves the applicability of APRA’s investigatory records exception.

2. Investigatory records

Under APRA, the investigatory records of law enforcement agencies may be excepted from disclosure at the discretion of the agency. Ind. Code § 5-14-3-4(b)(1).

Moreover, “investigatory record” means “information compiled in the course of the investigation of a crime.” Ind. Code § 5-14-3-2(i). Notably, APRA does not define the term crime, but the Indiana Code generally defines crime as “a felony or misdemeanor.” *See* Ind. Code § 35-41-1-6.

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). Indeed, the Georgetown Police Department is a law enforcement agency for the purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6).

That means the GPD has discretion – or choice – under APRA to withhold the agency’s investigatory records from public disclosure. Under APRA, “investigatory record,” means “information compiled in the course of the investigation of a crime.”

This, however, does not mean that all material in the possession of a law enforcement agency can be withheld. For example, *at the very least*, dispatch information is required to be created and disclosed. This includes descriptions of property damage, and the time and nature of the agency’s response, amongst other details. *See* Ind. Code § 5-14-3-5.

This disclosure also includes arrestee information and there are other statutes which speak to disclosure of any juvenile set to lockup.

What is more, no discretionary exception in APRA is absolute. As a preliminary matter, APRA places the burden of proof for the nondisclosure of a public record on the agency. The presumption is always disclosure. *See* Ind. Code § 5-14-3-1. For the purposes of this proceeding, that means the GPD must justify the application of APRA's investigatory records exception the records requested by Haller.

Additionally, if an agency cannot show that its decision to withhold a discretionary record is not arbitrary or capricious, it may be found in violation of the law by a court. *See* Ind. Code § 5-14-3-9(g)(2). This office adopts a similar standard for administrative adjudicative purposes.

In instances like this, the guidance we issue mirrors the body-worn camera statutes. Therefore, if any of the following are implicated, withholding discretionary material may be appropriate:

- (A) creates a significant risk of substantial harm to any person or to the general public;
- (B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;
- (C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency as defined in section 2 of

this chapter and notwithstanding its exclusion under section 4(b)(1) of this chapter; or

(D) would not serve the public interest.

Ind. Code § 5-14-3-5.2. If these factors are not in play, however, arguably material should be disclosed. The discretion works both ways. Based on the information provided, this office does not find reason to withhold disclosure of information in its entirety.

CONCLUSION

Based on the foregoing, it is the opinion of this office the Georgetown Police Department cannot rely upon the investigatory records exemption to withhold the entirety of investigatory materials. Some information is mandatory disclosure. This office is available upon request to provide guidance on any of the statutes referenced in this opinion.

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Issued: September 30, 2024