STATE OF INDIANA

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February 27, 2026

Re: Complaint 25-FC-137
Douglas Johnson (Complainant) v.
Lake County Prosecutor's Office (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed July 2, 2025.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on October 28, 2025, requesting a formal response by November 26, 2025. A formal response, submitted by Attorney Tramel Raggs of Raggs Law, P.C. on behalf of Respondent, was received in this office on November 26, 2025.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide a copy of records requested related to a criminal case.

ANALYSIS

The public policy of 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." Indiana Code (IC) 5-14-3-1. Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent's public records during regular business hours. IC 5-14-3-3(a).

Complainant filed a request for copies of public records on March 25, 2025. The request sought a copy of police reports, documents regarding witness interviews, copies of all electronic data from enumerated electronic devices including emails and call logs, a list of physical evidence still in the Respondent's possession, military records, any and all information regarding the criminal background of two (2) named individuals and all emails relating to the investigation, arrest and prosecution of Complainant's client.

Respondent states in its formal response to this office, dated November 26, 2025, that the request for information submitted by Complainant was denied, in part, under the attorney work product exception to disclosure and denied, in part, under the investigatory records exception. This formal response is quite different from the earlier response provided to Complainant in April of 2025.

The April response to Complainant denies access to the entire records request based upon attorney work product exclusion. A denial we found was in error for at least part of the request. A subsequent conversation between the parties, and an email of April 29, 2025, acknowledged that the request for records was still denied, in part, subject to the work product exclusion but the remainder of the request would be provided in a reasonable time. However, at a future date Respondent denied the remainder of the record request based upon the investigatory records exception.

APRA contains exceptions-both mandatory and discretionary-to the general rule of disclosure. 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. IC 5-14-3-4(a). APRA lists other types of records that may be excepted from disclosure at the discretion of the public agency. IC 5-14-3-4(b).

> *The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:*
>
> > *(A) a public agency;*
> >
> > *(B) the state; or*
> >
> > *(C) an individual." IC 5-14-3-4(b)(2).*

Respondent is an employee of a public agency, the county, and had within Respondent's discretion the option to claim the exception for work product provided by an attorney.

APRA further defines the "work product of an attorney" as:

> *information compiled by an attorney in reasonable anticipation of litigation including the attorney's:*
>
> > *(1) notes and statements taken during interviews of prospective witnesses; and*
> >
> > *(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions. IC 5-14-3-2(u).*

APRA goes on to say that the definition does not restrict the application of any exception under the work product exception of IC 5-14-3-4(b).

APRA requires a public agency, when denying a request to disclose records, to make the denial in writing, and to include a statement of the specific exception or exemption authorizing the withholding of the records and the name and title of the individual responsible for the denial. IC 5-14-3-9(d). Respondent denied the request but cited an exemption that did not apply to a significant portion of the records as requested.

APRA also provides an exception for investigatory records, at the discretion of the public agency. IC 5-14-3-4(b)(1).

> *"Investigatory record" means information compiled in the course of the investigation of a crime. IC 5-14-3-2(i).*

Respondent invoked this exception to preclude the disclosure of those records not falling within the work product exception. This office has consistently recognized the broad nature of the investigatory record exception. *Opinion of the Public Access Counselor 25-FC-137.*

However, Complainant challenges the application of the exception to certain records including the military records of the victim and criminal histories of other named individuals as information that was collected but not produced by Respondent.

Opinion of the Public Access Counselor 07-FC-274 contemplated the term "compiled" and states:

> *Because the definition of investigatory records used the word "compiled" rather than "created." It is my opinion that records withheld from disclosure using the investigatory records exception need not be created during the course of the investigation. Rather, records gathered in the course of an investigation of a crime, regardless of when they were created, may be withheld from disclosure under this exception. The legislature has put in place this exception to allow law enforcement agencies to conduct their investigations without disclosing all of their investigatory tools, and I believe the legislature could have limited the exception to only records created during the investigation. [But] that is not the case.…*

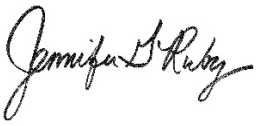
The investigatory record exception is subject to the determination by the public agency, we do not dispute that determination. However, APRA provides that when a court is reviewing a denial for a release of records under IC 5-14-3-4(b) the agency must meet the burden of proof by establishing the content of the

record with adequate specificity and not by relying on a conclusory statement. IC 5-14-3-9. Each record must be reviewed and a determination made as to whether that specific record falls within the investigatory record exception.

APRA further requires that if a public record contains disclosable and nondisclosable information, the public agency shall separate the material that may be disclosed and make it available for inspection and copying. This office just recently reconfirmed that attorney invoices were disclosable because the information regarding attorney work product could be redacted from the disclosable record. *Opinion of the Public Access Counselor 25-FC-39.*

CONCLUSION

This office finds that the Respondent violated APRA by failing to cite all applicable exemptions in its initial denial for nondisclosure of the requested records. However, as one or more valid exceptions apply, Respondent did not violate APRA by not providing the requested records.



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