



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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September 8, 2015

Mr. James Donato
1617 Howard Street
Suite 10
San Francisco, California 94103

Re: Formal Complaint 15-FC-213; Alleged Violation of the Access to Public Records Act by the City of Indianapolis

Dear Mr. Donato,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded to your complaint via Justin Paicley, Esq.. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 27, 2015.

BACKGROUND

Your complaint dated July 24, 2015, alleges the City of Indianapolis violated the APRA by denying your access to public records.

You contend on July 6, you submitted a public records request to the City seeking copies of the daily log or record of accidents maintained by the Indianapolis Police Department. Such a record is mandated by Ind. Code § 5-14-3-5. On July 14, you received a response stating that the records of the accidents are the crash reports can be obtained at Buycrash.com. You contend this is a denial of access because you requested copies of the daily log or record of accidents, not copies of the crash reports.

The City concedes that they are indeed required to maintain a log or record of the accident, however, the record they maintain is the accident report itself, which is uploaded and available at buycrash.com.



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ANALYSIS

The public policy of the 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.” See Ind. Code § 5-14-3-1. The City of Indianapolis is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Ind. Code § 5-14-3-5(c) states:

An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (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.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

In Opinion of the Public Access Counselor 09-FC-93, former Public Access Counselor Health Willis Neal opined:

In some instances, a law enforcement agency will not maintain a separate record titled “daily log” but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log



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information, the agency will generally provide copies of incident reports. In some cases, the agency will redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying.

It appears as if the City of Indianapolis does not create a separate “daily log” and instead uses the accident report to substitute for the required record mandated in the APRA. The information is made available for inspection and copying under the buycrash.com portal which I have stated is permissible in *Opinions of the Public Access Counselor* 14-FC-286 and 15-FC-147. Those Opinions are incorporated by reference.

You have also indicated your belief that a public agency may not charge for inspection of records. Because the online accident report portal associates a fee for inspection and copying, you contend this runs contrary to the APRA. As I have stated to you in the past, the APRA itself contemplates such a statutorily authorized alternative fee schedule under Ind. Code § 5-14-3-8(f). In that manner, it supersedes the APRA and allows a charge for inspection and copying under Ind. Code § 9-29-11-1. The statute does not distinguish between mere inspection and copying. Simply put, I interpret the intent of Ind. Code § 9-29-11-1 to include inspection. Subsection (c)(1) does expressly address inspection (albeit addressing the state police) consistent with my interpretation of the intent of the statute as a whole.

You also argue this runs contrary to previous PAC opinions, specifically an Informal Inquiry published on January 28, 2005 by staff attorney Lea Ellingwood which states the fee authorized by Ind. Code § 9-29-11-1 concerns obtaining a copy of an accident report and not mere inspection. That Opinion was written before law enforcement contracted with the buycrash.com service to house all of those reports. Therefore the accident report/daily log was still physically in the custody of law enforcement offices. Now my understanding is that the officer on the scene will upload the information directly into the portal so that it is instantly available albeit a copy is not kept locally.

Again, because the specific intent of Ind. Code § 9-29-11-1 is to serve as a funding stream for law enforcement operations, training and education, it is my interpretation of the statute that public access to accident reports is chargeable. However, to the extent that a local law enforcement agency maintains a *separate* daily log of accidents, you would be entitled to inspect them free of charge. If the log is substituted by the report uploaded to the online portal, however, you would be charged to access it.



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CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the City of Indianapolis has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Justin Paicely, Esq.