



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 17, 2013

Mr. Ryan J. Sabalow
307 N. Pennsylvania St.
Indianapolis, IN 46206

Re: Formal Complaint 13-FC-278; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Sabalow,

This advisory opinion is in response to your formal complaint alleging Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The ISP has responded to your complaint through Captain Dave Bursten. 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 September 17, 2013.

BACKGROUND

Your complaint alleges the Indiana State Police violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You allege on August 16, 2013 you submitted to the ISP a request for records and were denied the following information:

- Purchase orders or invoices for any International Mobile Subscriber Identity locator device (sometimes called an "IMSI catcher" for short). While some IMSI devices are sold under the product name StingRay or TriggerFish, this request applies to any such device the department has purchased with department funds or grant money.
- Contracts or agreements signed with Harris Corporation (headquartered in Melbourne, Florida) since 2008 for the purchase of equipment, software, maintenance or training for law enforcement agencies, as well as invoices, purchase orders, and any supporting documentation collected in the procurement process.

- Grant applications or funding request related to the above transactions.

It does not appear the ISP responded to your initial request. The request was deemed denied seven (7) days after its submission. However, ISP provided a response to you on September 16, 2013, stating all of the records you were seeking either did not exist or were not subject to disclosure. Specific to your current complaint, the ISP denied the records reasoning that the public disclosure of the records would threaten public safety under the APRA.

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 Indiana State Police 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 ISP’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).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Ind. Code § 5-14-3-4(b)(19) states that the release of record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack is at the discretion of the public agency. A record described under this subdivision includes a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism.

Ind. Code § 5-14-3-4.4(b)(1) further holds the agency who is the custodian of the documentation containing sensitive information may deny the disclosure of the record or part of the record. The ISP’s response is in substantial compliance with the other portions of the statute.

The ISP has stated in their response it is their determination the records you seek fall into this exception. This complaint has weighed heavily on the ISP’s public information staff. They unilaterally reached out to this Office to attempt to satisfy as much of the request as possible. It appears this was done in the spirit of cooperation and with a focus on transparency. In fact, the ISP did make the records available for inspection. I declined out of deference to their expertise in matters of public safety.

That being said, you are fully accurate in your statement that, "Contracts and other financial records are vital information that show how government agencies spend taxpayer dollars and are traditionally among the most readily available public documents at an agency". Whenever possible, this Office, as is its charge, views the facts in a light most favorable to the individual who has been denied a record. The burden is on the public agency to show why a record may not be released. ISP maintains the nature of this records request is particularly sensitive. As I am not a finder of fact, nor am I a subject matter expert in public safety or terrorism, I cannot accurately determine if the records contain information that would threaten public safety. If they do, then the withholding of the records is not a violation. If they do not, then it would be a violation. That fact-sensitive matter would be determined by a trial court which may compel disclosure through injunctive relief or the discovery process.

After consulting with the Public Access Counselor, there was some information that was determined to be appropriate for disclosure. I trust you are either in receipt of that record or it is forthcoming. I also encourage the ISP to further investigate their records to ascertain if there are any records which would be responsive to your request that could be released after redaction.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Indiana State Police has not violated the APRA in denying your request.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

cc: Capt. Dave Bursten