



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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September 28, 2016

Mr. David R. Scott  
1814 Marvin Gardens  
Elkhart, Indiana 46714

*Re: Formal Complaint 16-FC-217; Alleged Violation of the Access to Public Records Act by the Indiana State Police*

Dear Mr. Scott:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police (“ISP”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. Ms. Cynthia Forbes, Esq., Legal Counsel, responded to your complaint. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 26, 2016.

## **BACKGROUND**

Your complaint dated August 20, 2016, alleges the Indiana State Police violated the Access to Public Records Act by not fulfilling your records request. On or about August 17, 2016, you made a “FOI Request” for information regarding a 2005 murder case. The ISP responded to your request by invoking the investigatory record exemption to disclosure, but releasing a “media summary” containing information related to the case. ISP responded to your formal complaint reiterating its legal authority to exercise its discretion in withholding the materials as investigatory.

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

ISP informed you in its denial, it chooses to invoke the investigatory records exemption under Indiana Code § 5-14-3-4(b)(1). Investigatory records of law enforcement agencies may be withheld or released at the discretion of the agency.

Typically, I defer to law enforcement as the subject matter experts in determining what would jeopardize the course of an investigation and what would not. Even with closed cases, there may be reasons to withhold case information. In the event the release of the records would compromise an element of public safety, an expectation of privacy, or an ongoing investigation, such records should be withheld.

You outline several policy reasons for releasing the information and they are well-received. However, past dealings with the agency leads me to believe ISP does not withhold information arbitrarily without reason. They have responded in good faith to your complaint with outlined reasons for denial and under the statute, they have a legal foundation to withhold the information you seek.

### **CONCLUSION**

Based on the foregoing, in the opinion of the Public Access Counselor the Indiana State Police did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Cynthia Forbes, Esq.