





# STATE OF INDIANA

**ERIC J. HOLCOMB, Governor**

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The Complainant requested the material again on November 9 and 16, 2016, with Respondent formally answering on November 16, 2016, by providing him with a copy of a purchase order from Harris Corporation and denying access to the purchase contract under Indiana Code 5-14-3-4(b)(19).

The Respondent stated the records were at the discretion of ISP to deny disclosure of the purchase contract. Indiana Code 5-14-3-4(b)(19) provides that a public agency may use its discretion to exempt from disclosure a record or a part of a record that the disclosure of would have a reasonable likelihood of threatening public safety.

## 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)*. Accordingly, any person has the right to inspect and copy the IPS'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 has raised two arguments against disclosure. ISP asserts that under Indiana Code 5-14-3-4(b)(19) the following public records are disclosable at the discretion of the public agency: records 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 a terrorist attack. This includes records which are assembled, prepared or maintained to prevent an act of terrorism. ISP believes these records were all prepared in relation to the purchase of equipment used to prevent and respond to acts of terrorism; therefore, they fall within this exception. Respondents also argue the Indiana Court of Appeals has examined this discretion in relation to an investigatory record. In *Journal Gazette v. Bd. Of Trustees of Purdue Univ.*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998) that while required to construe exceptions to public disclosure laws strictly, but it does not mean the Court should contravene an expressed expression created by the Legislature.

The Complainant contends that since other police departments have released such documentation, ISP should do the same. The departments mentioned are not in Indiana, thus not governed by the APRA. In *Opinion of the Public Access Counselor 13-FC-278*, herein incorporated by reference, I urged ISP to disclose all information in relation to this purchase which could practically be released without jeopardizing public safety. My understanding is ISP undertook an audit of this information and eventually released certain materials accordingly, the same ones which have been released to the Complainant. My recommendation in *Advisory Opinion 13-FC-278* stands; however, it remains unclear



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if there are any non-sensitive materials which remain to be released. I hereby reiterate that recommendation pursuant to this request as well.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana State Police have not violated the APRA.

A handwritten signature in black ink, appearing to read "LHB", is positioned above the printed name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Cynthia Forbes, Esq.