



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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April 11, 2016

Mr. Scott A. Faultless  
5845 Lawton Loop East Drive  
Indianapolis, Indiana 46216

*Re: Formal Complaint 16-FC-47; Alleged Violation of the Access to Public Records Act by the Dearborn County Sheriff Department*

Dear Mr. Faultless:

This advisory opinion is in response to your formal complaint alleging the Dearborn County Sheriff Department ("Department") and Sheriff Michael Kreinhop violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Department has responded via Sheriff Kreinhop. 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 March 7, 2016.

## **BACKGROUND**

Your complaint dated March 1, 2016 alleges the Dearborn County Sheriff Department improperly denied your records request.

On December 28, 2015, you requested from the Department records related to a civil incident which occurred wherein a child was bitten by a dog. The Department denied your request under Ind. Code §5-14-3-4(b)(1), the investigatory records exemption. You contend this exemption is improper because an investigatory record under Ind. Code § 5-14-3-2(i), means "information compiled in the course of the investigation of a crime." You note this incident is a purely civil matter.

On February 19, 2016 the Department responded. Sheriff Kreinhop acknowledges the matter is a civil incident but notes the Department does not investigate civil matters. The Department asserts information compiled in the course of even a civil matter may turn into a criminal matter and the department is investigating the situation accordingly.

## 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 Dearborn County Sheriff Department 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 Department’s disclosable 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).

Under Ind. Code § 5-14-3-4(b)(1) the investigatory records of a law enforcement agency are exempt from disclosure at the discretion of the law enforcement agency. As I have noted on several occasions, this exemption is fairly broad and covers records for all investigations, regardless of their status in the investigatory process.

While I agree virtually any information collected by the Department may transform into a criminal investigation, I caution any law enforcement agency to be judicious when exercising the discretion to withhold a record. The Sheriff is correct that the APRA does not differentiate between open and closed investigations, a common sense standard should be applied in order to comply with the spirit of governmental transparency and accountability

If the release of a record would not compromise the integrity of an ongoing investigation, an element of public safety, or an expectation of privacy, it should be released and not withheld arbitrarily. If one of those considerations would be harmed by its release, then it can be withheld appropriately. I urge the Department to incorporate this standard into its standard operative procedures instead of having a *blanket policy* stating nothing will ever be released. It should also be noted sensitive information may be redacted and the remainder of a record be released, if appropriate.

## CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Dearborn County Sheriff Department has not violated the Access to Public Records Act; however, I strongly encourage the Department to revise its stance on investigatory records based upon the above counsel.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Sheriff Michael Kreinhop