
OPINION OF THE PUBLIC ACCESS COUNSELOR

ANDREI K. LAGERGREN,
Complainant,

v.

CLERK OF THE ALLEN CIRCUIT COURT,
Respondent.

Formal Complaint No.
19-FC-113

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to several formal complaints alleging the Allen County Prosecutor's Office, the City of Fort Wayne and the Allen County Clerk of the Courts all violated the Access to Public Records Act.¹ Christopher M. Nancarrow, Clerk of the Courts, filed a response to the complaint. In accordance with Indiana Code § 5-14-5-

¹ Ind. Code § 5-14-3-1 to 10.

10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on November 1, 2019.

BACKGROUND

This case involves a dispute over access to a probable cause affidavit associated with a search warrant executed by the Ft. Wayne Police Department.

Andrei K. Lagergren (“Complainant”) contends the Allen County Prosecutor’s Office, the City of Fort Wayne and the Allen County Clerk of the Courts (“Clerk”). After review of his various complaints, it became clear that only Lagergren’s complaint against the Clerk was legitimate and warranted review. The complaints against the Prosecutor’s Office and the City were dismissed, however, each were notified of the complaints. Context for this decision is provided herein below.

Lagergren is seeking the probable cause affidavit for a September 20, 2019, search warrant allowing the Fort Wayne Police to tow and search the vehicle of a William Britt². Problematically, Lagergren submits his requests in a highly unusual and unorthodox manner by copying and pasting clip art, pictures, news articles, YouTube links, and other conspiratorial narratives into a digital pamphlet and then sticks the request somewhere in the middle. Lagergren, a self-styled “news service” buries the lede when it comes to these requests.

As a result, these messages get lost in translation. As noted above, this office rejected Lagergren’s complaints against

² No relation to the Indiana Public Access Counselor

Fort Wayne and the Allen County Prosecutor's Office. Lagergren would be well-served to submit his requests in a cogent and concise manner free from extraneous baffle-gab. His messages look like spam and mirror the exact type of messages IT departments preach not to open.

In any event, Lagergren's request for the probable cause affidavit for the September 20, 2019, search warrant was indeed received by the Clerk of the Courts but subsequently denied. The Clerk invokes the Indiana Administrative Rules as justification for denial. Notably Rule 9(B)(1)(e), which states:

Entire cases that exclusively pertain to investigative requests and process unrelated to a pending criminal proceeding, including but not limited to search warrants, subpoenas ad testificandum, subpoenas duces tecum, and other investigative requests.

ANALYSIS

1. The Access to Public Records Act ("APRA")

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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." *Id.*

There is no dispute that APRA applies to Allen County Courts. *See* Ind. Code § 5-14-3-2(p), however, the APRA and Administrative Rule 9, promulgated by the Indiana Supreme Court, are to be read in harmony to the extent possible. *See* Administrative Court Rule 9(A)(1).

2. Probable Cause Affidavits for Search Warrants

As noted above, Administrative Rule 9(G)(e)(1) excludes from public access miscellaneous cases opened for the purpose of investigation or conducting a search. This rule prevents the target of the search from being tipped off that the search will be executed. The rule *only* applies to materials unrelated to a pending criminal case.

Upon probable cause,³ once a search warrant is executed pursuant to Indiana Code section 35-33-5-7, and is used as establishment for a criminal charge, it no longer becomes unrelated to the case. Therefore the underlying materials, such as probable cause affidavits, should become public.

Consider the following taken from the Indiana Supreme Court Office of Court Services FAQ addendum to the 2019 Public Access to Court Records Handbook:

Administrative Rule 9 has attempted to incorporate the practice of many courts concerning arrest warrants, search warrants, and indictments and informations. Warrants and indictments need to be kept confidential if they are going to accomplish their intended purpose.

³ It should be noted that a search warrant need not only be predicated upon a written probable cause, it may be ordered based upon testimonial evidence. *See* Ind. Code § 35-33-5-8. Notably, the Clerk does not deny, however, that a written affidavit exists.

However, once they have been served and the Clerk has knowledge of service, then there is no longer a need for confidentiality⁴.

Emphasis added. If affidavits of search warrants related to criminal cases become concealed in miscellaneous cause numbers and become confidential indefinitely under Administrative Rule 9, the public would never be able to scrutinize the constitutionality and reasonableness of a search. I am confident this is not the purpose and intent of Administrative Rule 9.

This is one of those cases although it is not the place of this office to judge the legality of the seeking a search warrant after a vehicle has been seized. Such an argument may be made by a defendant's attorney, but it is indeed a matter also appropriately examined for propriety by the public and the media. Should probable cause for searches that end up in criminal charges be relegated to the locked filing cabinet of miscellaneous investigatory cases, the public's trust in law enforcement and justice suffers egregious erosion.

⁴ <https://www.in.gov/judiciary/iocs/files/PublicAccessHandbook.pdf>;
<https://www.in.gov/judiciary/iocs/files/pubs-accessshandbook-faq.pdf>

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Allen Superior Court release the probable cause affidavit of the search warrant in question.

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

Luke H. Britt
Public Access Counselor