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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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MARGARET R. MENGE,  
*Complainant,*

v.

MONROE COUNTY SHERIFF'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
19-FC-44

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Monroe County Sheriff's Office ("MCSO") violated the Access to Public Records Act<sup>1</sup> ("APRA"). Sheriff Brad Swain and legal counsel Craig M. McKee responded on behalf of the MCSO. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 3, 2019.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## **BACKGROUND**

This case involves a dispute over access to an arrestee's date of birth contained in a law enforcement agency's arrest report.

On May 24, 2019, deputies with the Monroe County Sheriff's Office ("MSCO") arrested Dayana Sarahid Medina Flores and Luis Eduardo Posso on suspicion of multiple criminal offenses including neglect of a dependent and criminal confinement.

On May 29, 2019, Margaret Menge ("Complainant") filed a request for public records with the MSCO seeking the agency's daily log for the arrest of Posso and Flores, and "all documents that show birthdates for Posso and Flores."

The MSCO responded to Menge in writing the next day acknowledging her request. While awaiting approval, Menge contacted MSCO spoke with an agency employee who informed her that the agency removes birth dates from in accordance with Indiana Administrative Rule 9(G)(1)(e) and a 2008 advisory opinion from this office.

Ultimately, on May 31, the MCSO provided Menge with the arrest reports for Posso and Flores with their dates of birth redacted.

Menge filed a formal complaint alleging the MSCO violated the Access to Public Records Act ("APRA") by redacting Posso and Flores' dates of birth from the records the agency disclosed in response to her request.

In essence, Menge argues that APRA does not specifically exempt birth dates from disclosure. Moreover, she argues

the legal authority initially cited by the MCSO is inapplicable.

On June 13, 2019, the MSCO responded to Menge's complaint. Although the MSCO did not provide a substantive legal argument about why the redactions are authorized, the agency seemingly deferred to the guidance and recommendation of this office.

### **ANALYSIS**

At issue in this case is whether the Monroe County Sheriff's Office had discretion to withhold the birth dates of two arrestees from those records required by Indiana Code section 5-14-3-5.

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

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." Ind. Code § 5-14-3-1. The Monroe County Sheriff's Office is a public agency for the purposes of the APRA, and subject to its requirements. Ind. Code § 5-14-3-2(n).

Therefore, any person has the right to inspect and copy the MCSO's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

## 1.1 Statutory Interpretation

The issue here is largely a matter of first impression for this office. It should be noted outright that the Access to Public Records Act is not to be interpreted with strict construction – most particularly when it comes to the “discretionary” categories of public records listed in Indiana Code section 5-14-3-4(b). Discretion is inherently subjective because it means the agency has a choice about whether to disclose a piece of information. Unlike confidential materials, which are black and white, discretion can be selectively applied on a case-by-case basis according to necessity.

The Indiana General Assembly mandated that the APRA “be liberally construed” in favor of transparency. *See* Ind. Code § 5-14-3-1. Our courts have recognized this tenet as well and called for disclosure exceptions to be narrowly construed. *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. App., 1995).

When considering matters of statutory construction, the entirety of a statute is to be read in order to contextualize its individual provisions. Statutes relating to the same general subject matter are in *pari materia* and should be construed together so as to produce a harmonious system. *Indiana Alcoholic Beverage Commission v. Osco Drug, Inc.*, 431 N.E.2d 823 (Ind. App. 1982).

## 1.2 Requirement of a Daily Log

Any time a law enforcement agency makes an arrest, a record of such activity would be the existence of the “daily log,” which must be developed in accordance with Indiana Code section 5-14-3-5.

The statute, in relevant part, states the following:

(c) An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

(1) The time, substance, and location of all complaints or requests for assistance received by the agency.

(2) The time and nature of the agency's response to all complaints or requests for assistance.

(3) If the incident involves an alleged crime or infraction:

(A) the time, date, and location of occurrence;

(B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;

(C) The factual circumstances surrounding the incident; and

(D) A general description of any injuries, property, or weapons involved.

Additionally, Indiana Code section 5-14-3-5(b) requires an agency to make the following information available if a person is received in jail or lockup:

(1) Information that identifies the person including the person's name, *age*, and address.

(2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person is being held.

(3) The time and date that the person was received and time and date of the person's discharge or transfer.

(4) The amount of the person's bail or bond, if it has been fixed.

(emphasis added). As noted in *Informal Opinion of the Public Access Counselor*, 16-INF-09 (2016):

For daily logs, Indiana Code § 5-14-3-5(c) contemplates disclosure that is enough to explain the substance of the incident, but must give the reader an idea of what happened. Indiana Code 5-14-3-4(b)(1) provides discretionary release of records to protect the integrity of the investigation. Reading these two provisions together, a daily log should contain enough information to provide the public information about the general substance of the incident, but not so much as to impair law enforcement's ability to investigate. The information disclosed would be situation-specific, but the APRA generally contemplates as much information as possible.

The development and disclosure of a daily log entry for each suspected crime is not discretionary and must be disclosed in unredacted form upon request.

The operative portion of the statute at controversy in this cases is the requirement of documenting a jailed person's "age." The plain language of the statute does not specifically include a requirement for date of birth. On its face, "age" simply contemplates a whole number.

The Indiana Supreme Court applied similar reasoning in *Post-Tribune v. Gary Police Department*, 643 N.E.2d 307 (Ind.

1994). In that case, the court adopted the trial court's holding that the required disclosure of the "location" of an alleged crime "does not require release of the exact address of the crime." 643 N.E.2d 307 at 309. Similarly, the required disclosure of an arrestee or jailed person's age likely does not require release of the person's exact date of birth.

Moreover, the Administrative Rule cited initially by the MCSO seeks to protect the privacy of victims and witnesses but not necessarily arrestees. *See* Ind. Admin. R. 9(G)(1)(e). As noted by Menge, this may be persuasive authority, but cannot be used by law enforcement because that rule applies exclusively to court records.

Menge's argument is also well taken that a specific birthdate would distinguish common names of arrestees and clarify ambiguity. Even still, the statute simply uses the term "age." To interpret "age" to mean "date of birth" would be akin to legislating from the executive branch – something the Public Access Counselor is careful not to do.

Regardless, there is not a specific exemption to disclosure regarding an arrestee or jailed person's date of birth contained in the records of law enforcement agencies. Although the MCSO's concerns are noted, if birth dates are contained in law enforcement documentation – and are not inherently investigatory in nature – this office is not aware of an applicable exemption to disclosure.

That written, given the lack of guidance from this office and the courts on this specific issue, this situation does not warrant a declaration of non-compliance by this office. We simply request law enforcement agencies be mindful of this formal opinion in the future.

## CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Indiana General Assembly did not include dates of birth as confidential or sensitive materials of persons arrested by law enforcement.

As for information required under Indiana Code section 5-14-3-5, all that needs to be documented to satisfy that statute's requirements is "age" in the form of a whole number.

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

Luke H. Britt  
Public Access Counselor