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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JACOB BROWN,  
*Complainant,*

v.

INDIANA STATE POLICE,  
*Respondent.*

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Formal Complaint No.  
19-FC-75

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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 Indiana State Police (“ISP”) violated the Access to Public Records Act.<sup>1</sup> ISP responded via Legal Counsel Barbara Rosenberg. 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 August 23, 2019.

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

## **BACKGROUND**

This complaint involves a dispute over access to records associated with a specific Indiana State Police case number. On August 20, 2019, Jacob Brown (“Complainant”) filed a records request with ISP seeking “a copy of all documents and video recording[s] relating to case number 51-16450.”

Two days later, ISP denied Brown’s request in accordance with Indiana Code section 5-14-3-4(b)(1), which is the Access to Public Records Act’s disclosure exception for the investigatory records of law enforcement agencies. ISP provided Brown a copy of the press release relating to the case of interest.

As a result, Brown filed a formal complaint against ISP on August 23, 2019. In essence, Brown asserts that ISP’s denial constitutes an improper denial of public access under the Access to Public Records Act.

ISP disputes Brown’s assertion that the agency’s denial violated APRA. Essentially, ISP relies on APRA’s disclosure exception for investigatory records as justification for denying Brown’s request. Specifically, ISP argues that the relevant case file qualifies as an investigatory record because the agency investigated Brown for battery on a law enforcement officer,” which is a criminal offense.

## **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 § 5-14-3-1.5-1.

The Access to Public Records Act (“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.* The Indiana State Police is a public agency for the purposes of APRA; and thus, subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the ISP’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Under APRA, “public record” means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Here, the records requested by Brown are public records for purposes of APRA. Although public records are presumptively disclosable, APRA contains both mandatory and discretionary exceptions to disclosure.<sup>2</sup> This case involves the applicability of one of

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<sup>2</sup> Ind. Code § 5-14-3-4(a) and (b).

APRA's discretionary exceptions to disclosure: the investigatory records exception.

## **2. Investigatory Records of Law Enforcement**

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). Indeed, the Indiana State Police is a law enforcement agency for purposes of APRA. *See* Ind. Code § 5-14-3-2(q)(6). That means ISP has discretion under APRA to withhold the agency's investigatory records from public disclosure.

Under APRA, "investigatory record," means "information compiled in the course of the investigation of a crime." Ind. Code § 5-14-3-2(i). In other words, "if there is no criminal investigation, the documents cannot be withheld at [the agency's] discretion pursuant to the investigatory records exception." *Scales v. Warrick County Sheriff's Department*, 122 N.E.3d 866, 871 (Ind. Ct. App. 2019).

Here, both sides agree that Brown requested records related to ISP case number 51-16450. Although ISP provided Brown with a news release from the case, the agency denied access to the rest of the relevant case records.

ISP argues that it has discretion to withhold the records from disclosure as investigatory records because the "case file related to Mr. Brown's arrest is clearly a criminal investigation as he was investigated for the offense of battery on a law enforcement officer as a result of his interaction with ISP... ."

As a preliminary matter, it is worth mentioning that this office is not privy to the contents of the full case file requested

by Brown. As a result, this analysis is based only on the information provided by the parties.

Based on the information presented, this office is not persuaded that the records in contention fall under APRA's investigatory records exception.

As set forth *supra*, APRA defines investigatory records as "information compiled in the course of the investigation of a crime." Ind. Code § 5-14-3-2(i). The Indiana Court of Appeals recently observed that for the exception to apply "[t]he documents in contention must have been accumulated in the course of the investigation of a crime."

Here, the ISP news release does not state that ISP arrested Brown. In fact, the report says "N/A" under the section reserved for documenting arrests. The same form also says "N/A" under the section documenting where the arrestee is incarcerated.

In sum, according to the report provided by ISP, the agency did not arrest Brown for battery against a law enforcement officer on the night in question. Although ISP states in its response that Brown's "arrest is clearly a criminal investigation" the agency did not provide any information indicating it arrested Brown for battery against a law enforcement officer.

Instead, the report states that a physical confrontation ensued between the trooper and a male subject while the trooper was trying to restrain the subject, which resulted in the trooper being kicked and punched in the chest area. The trooper initially categorized the altercation as a "fight",

however, other details later emerged which suggest otherwise.

Granted, the applicability of APRA's investigatory records exception is not predicated on the existence of an arrest by law enforcement. Still, in many cases, when police arrest a person for a criminal offense it reinforces the assertion that the agency is in the course of the investigation of a crime.

Additionally, the ISP report acknowledges that "it was later determined that the subject was possibly having a seizure and medics were called to the scene to transport the subject to [the hospital]."

The lack of an arrest, criminal indictment or information, and the trooper's acknowledgement the possibility of an underlying medical episode playing a role in the altercation enfeebles the argument that this case was a criminal investigation.

Indeed, ISP refers to the incident as a criminal investigation, but there isn't much information to fortify that position.

Even if the records in contention here qualify as investigatory records under APRA, ISP is not required by law to withhold them from disclosure. The agency has discretion over their release.

Regardless, it is the recommendation of this office that ISP release the records requested by Brown.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana State Police release the records requested by Brown related to ISP case number 51-16450 in accordance with the Access to Public Records Act as it does not appear criminal activity was involved in this situation.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor