

OPINION OF THE PUBLIC ACCESS COUNSELOR

MIRANDA BERNADAC,
Complainant,

v.

WHITE COUNTY SHERIFF'S DEPARTMENT,
Respondent.

Formal Complaint No.
20-FC-108

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the White County Sheriff's Department (WCSD) violated the Access to Public Records Act.¹ The county attorney, George W. Loy, filed an answer on behalf of the Department. 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 6, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records pertaining to an incident that occurred during an active shooter training conducted by the White County Sheriff's Department (WCSD) at the Meadowlawn Elementary School.

On June 11, 2020, Miranda Bernadac (Complainant), on behalf of her clients, filed a public records request with WCSD seeking the following:

Any and all records relating or pertaining to the presence of White County Sheriff's Department employees, agents, or contractors at Meadowlawn Elementary School on January 4, 2019 in connection with an incident characterized as active shooter training.

Responsive records include, but are not limited to, the following:

- Planning materials
- Instructions for employees, agents or contractors carrying out the training
- Notes made on-site or following the training
- Correspondence between the White County Sheriff's Department and Meadowlawn Elementary School and/or Twin Lakes School Corporation personnel and/or any external entities regarding the active shooter training
- Correspondence between White County Sheriff's Department and ALICE Training ® ("ALICE") personnel

- Contracts between and payment records to or from the White County Sheriff's Department and ALICE
- Contracts between and payment records to or from the White County Sheriff's Department and the school corporation
- Any other contracts or payment records relating to the incident
- Notes, emails, or other White County Sheriff's Department internal records and/or communications regarding the incident

Responsive records additionally include but are not limited to, the following:

- Any and all records relating to any shooter drill or other workplace safety training delivered by the White County Sheriff's Department, utilizing ALICE or any other method
- Records of any and all statements and communications, either public or informal, made by Sheriff Bill Brooks relating in any way to the Meadowlawn incident, shooter drill trainings, ALICE training, or related county policies or practices
- All documentation relating to shooter drill trainings at schools or other facilities conducted by the White County Sheriff's Department

On July 16, 2020, WCSD denied Bernadac's request. Mr. Loy, via email, informed the Complainant that the WCSD did not possess any of the records that she requested.

Bernadac argues that, based on conversations she had with Chief Deputy Roth, there should be some kind of existing records that are responsive to her request.

On September 4, 2020, WCSD filed a response to Bernadac's complaint denying that the agency violated the APRA. First, Loy confirms that when speaking with the Complainant, Chief Deputy Roth did reference an ALICE training certification belonging to an officer and said that he would speak with Sheriff Bill Brooks about whether a log was created resulting from any interviews that had been conducted after the active shooter training. Loy maintains that after communicating with Roth and the Sheriff, it was confirmed that the Department did not possess any responsive records.

Loy did inform this office that after replying to Ms. Bernadac's request, he was made aware that two ALICE certificates were awarded to two WCSD officers in 2014. However, those certificates were kept by the individual officers and were not actually maintained by the department. Nevertheless, on August 20, 2020, Loy forwarded copies of the certificates to the Complainant.

Notably, the Complainant reached out to other agencies, including the school corporation, and was unable to obtain records from those sources either. This complaint, however, was filed exclusively against the Sheriff's Department.

ANALYSIS

The issue in this case is the existence, or non-existence, of records related to a law enforcement training.

1. The Access to Public Records Act

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.

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.” Ind. Code § 5-14-3-1. The White County Sheriff’s Department (WCSD) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy the ISP’s public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Agency Records and Bernadac’s Request

APRA requires agencies to produce upon request within a reasonable time records maintained, created, or received which pertain to public business.

Indeed, the definition of public record is quite comprehensive:

"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.

Indiana Code section 5-14-3-2(r). Presumptively, a training of the sort conducted on January 4, 2019 would generate *some* kind of documentation unless the entire presentation was conducted extemporaneously without prepared material. While this office isn't in the business of making those types of assumptions, it would indeed be surprising if nothing exists from the Sheriff's perspective.

Toward that end, this office is limited in the amount of fact-finding which can be conducted beyond taking statements from the parties. White County's attorney maintains nothing exists responsive to the request. While this complaint was not filed against the school corporation, it is likely something exists from that agency. It is unlikely, however, any of the materials requested fall into an exemption to disclosure.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the White County Sheriff's Department did not violate the Access to Public Records Act, assuming that nothing exists from the aforementioned training session.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor