
OPINION OF THE PUBLIC ACCESS COUNSELOR

TRACI L. MILLER,
Complainant,

v.

MADISON COUNTY SHERIFF'S DEP'T.; ANDERSON
POLICE DEPT.; ET AL,
Respondent.

Formal Complaint No.
20-FC-27

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging multiple law enforcement agencies in Madison County violated the Access to Public Records Act.¹ 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 February 25, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the scope of the Access to Public Records Act's (APRA) daily log requirement for law enforcement agencies.

In February 2020, Traci L. Miller, a reporter with *The Herald Bulletin*, began making requests to law enforcement agencies in Madison County seeking to inspect or copy each agency's daily log or record, which lists suspected crimes, accidents, or complaints in accordance with APRA. Miller cited the relevant statutory provision in her requests. Miller also noted the request "is on a daily basis and is in the public interest."

Over the next couple weeks, Miller exchanged emails with the agencies and their lawyers regarding her requests. Although the agency responses varied, Miller ultimately concluded that law enforcement agencies in Madison County were not complying with the daily log requirements in the Access to Public Records Act.

As a result, Miller filed a formal complaint with this office on February 25, 2020, alleging various Madison County law enforcement agencies² improperly denied her access to public records in violation of APRA.

² Miller's complaint names the following agencies: Anderson Police Department; Madison County Sheriff's Office; Chesterfield Police Department; Ingalls Police Department; Summitville Police Department; Alexandria Police Department; Pendleton Police Department; Elwood Police Department; Lapel Police Department; Frankton Police Department; Daleville Police Department; and the Edgewood Police Department.

Essentially, Miller argues none of the named agencies fully comply with APRA's daily log requirement, which is codified under Indiana Code Section 5-14-3-5(c). More specifically, Miller takes exception to the amount of time the agencies take to permit inspection and copying of the daily log and the sufficiency of the information. Miller relies on a previous opinion³ from this office to support her argument that an agency must automatically provide the daily log within 24 hours of after law enforcement receives the report of an incident.

Miller acknowledges that a few of the agencies provided access to a document they referred to as a daily log, but she contends those records had missing or insufficient information.

Although this office notified each agency named in Miller's complaint, we solicited official responses only from the two largest agencies: (1) the Madison County Sheriff's Department (MCSD); and (2) the Anderson Police Department (APD) for purposes of efficiency.

On March 2, 2020, the APD filed a response to Miller's complaint. Two weeks later, the MCSD did the same. It is worth mentioning that the APD and MCSD responded only on behalf of their respective agencies. In other words, they are not speaking for the other law enforcement agencies in Madison County.

In sum, APD does not dispute Miller's claim that the agency is not complying with APRA's daily log requirement. Instead, APD contends—as it did previously with Miller—

³ *Op. of the Public Access Counselor*, 12-FC-216 (2012).

that the department cannot produce the requested records because there is means available for doing so.

The MCSD disputes Miller's complaint. Specifically, the MCSD argues that the agency has complied with APRA, and denies Miller's claim that the information she seeks is not being maintained in accordance with Indiana Code section 5-14-3-5(c).

Moreover, the department asserts that a law enforcement agency is not required to maintain a separate record titled "daily log" that contains the required information so long as the required information is made available for inspection and copying. The MCSD relies on previous opinions from this office to support that point.

ANALYSIS

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 Madison County Sheriff’s Department, the Anderson Police Department, and the other agencies named above are public agencies 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 MCSO and APD’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. Daily log or record

As a general rule, the Access to Public Records Act does not mandate the creation of records to satisfy a request. However, there are a handful of notable exceptions. Relevant as

to this matter, APRA affirmatively requires law enforcement agencies to create, maintain, and disclose a daily log or record listing suspected crimes, accidents, or complaints that includes the following information:

- (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 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved. Ind. Code § 5-14-3-5(c).

Ind. Code § 5-14-3-5(c). The creation of this record is not discretionary, but a mandatory "shall". An agency must make the information available for inspection and copying in compliance with APRA. *Id.* The record containing the information must be created within 24 hours after the suspected crime, accident, or complaint has been reported to the agency. *Id.* It follows that it would also be available shortly after the creation of the record.

Notably, law enforcement agencies enjoy broad discretion to withhold details of investigations and investigatory materials save for the items in the daily log. The level of detail in

the log is another matter altogether and again, is scrutinized on a case-by-case basis.

A daily log is distinguishable because if an agency is following the law, there should be no searching, gathering, or reviewing the daily log. The process should be rather more expedient.

To be clear, the daily log requirement is not an internal public safety device so much as an external public service to demonstrate transparency. If it were simply an bookkeeping requirement, the mandate would be found in Title 10. Rather it is in the APRA, meaning it should be easy and simple for the public to access.

Some law enforcement agencies may maintain a physical binder with the daily log inside and make it available for review upon request. A department will simply insert pages from that day into a three-ring folder and its cumulative compilation satisfies the daily log. At the same time, other agencies may simply use call for service reports or a document by any other name so long as the requisite information is contained therein.

For a log that must exist, hopefully in an organized chronological fashion, search time is next to nil and retrieval is a simple task.

Daily logs are already deemed, by our legislature, to be unequivocally disclosable. That means no legal or administrative review is necessary. This is what makes the MCSD's argument that the Sheriff needs to review daily log information prior to release problematic.

If an agency chooses to use another type of document as a substitute for a daily log, it should not be kept in a manner prohibitive to access. Once again, the statutory mandate is for public access, not for the convenience of law enforcement agencies. It matters not to this office what documents comprise the information, only that it is readily accessible.

As for the Anderson Police Department's argument, it is simply not following Indiana Code in regard to the daily log statute. An agency cannot simply shirk a statute simply because it is administratively difficult. The affirmative duty has been mandated by Indiana law since 1992. Twenty-nine years is plenty of lead time to make arrangements to comply.

Law enforcement should be enthusiastic to present to the public a summary of its daily activities. The daily log is an opportunity to demonstrate to the public they serve the good work they do on a day-to-day basis.

As a final aside, it is worth mentioning that in the experience of this office, the overwhelming majority of police departments and sheriff's offices in the state of Indiana follow this statute to the full extent.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Anderson Police Department violated APRA. The Madison County Sheriff's Department did not violate the law but it is strongly recommended it take this opinion under advisement for best practice purposes.

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

Luke H. Britt
Public Access Counselor