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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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TRACI L. MILLER  
*Complainant,*

v.

MADISON COUNTY SHERIFF'S DEP'T.,  
*Respondent.*

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Formal Complaint No.  
21-FC-104

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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 Madison County Sheriff's Department violated the Access to Public Records Act.<sup>1</sup> Attorney Jeffery Graham filed an answer on behalf of the agency. 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 July 22, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

In this case we consider whether the public agency's denial was appropriate under the Access to Public Records Act.

On July 8, 2021, Traci Miller (Complainant), a reporter for *The Herald Bulletin*, filed a public records request with Madison County Sheriff's Department (MCSD) seeking the following:

Any and all law enforcement recordings [Ind. Code 5-14-3-2(k)] of Robert Douglas-Sides Stafford, 19, while he was at the Madison County Jail located at 720 Central Avenue, Anderson, Indiana 46106; being transported from the jail or to the jail or while he was in law enforcement custody between approximately 3 a.m. to 7 a.m. on July 6, 2021.

The MCSD denied Miller's request the same day, stating in an email that, "[r]elease of any information other than what we have already released will have to be approved by the Indiana State police as they are conducting the in custody death (sic)." The MCSD also stated that it does not release video or audio recordings from the jail without subpoena due to security issues.

As a result, Miller filed a formal complaint alleging the denial violated the Access to Public Records Act. Specifically, Miller argues that the MCSD denied the request without legal justification. Miller also argues that the MCSD's policy of requiring a subpoena to inspect video and audio records from the jail is unreasonable and unnecessary.

On August 11, 2021, the MCSD filed a response to Miller's complaint denying the claim that the Sheriff denied her request without legal justification. Specifically, the MCSD argues that it has authority under APRA to deny Miller's request for two reasons.

First, the MCSD argues the requested records are investigatory records of a law enforcement agency, which an agency may withhold from disclosure under APRA. More specifically, the MCSD asserts the requested records are investigatory records of the Indiana State Police because ISP investigates all "in custody" deaths at the Madison County Jail. The MCSD contends that ISP began its investigation immediately after Stafford's death. Moreover, the department asserts that even if the Sheriff had access to the requested records, he would still have discretion to deny the request.

Second, the MCSD argues that the public disclosure of the requested records would cause a reasonable likelihood of threatening public safety by exposing vulnerability to a terrorist attack, which makes the Indiana Code section 5-14-3-4(b)(19) applicable to Miller's request.

The MCSD contends that the records, if disclosed, would provide the public with an exact location of the jail's security cameras and surveillance system as well as revealing the locations that are not under video surveillance.

The MCSD argues the release of internal jail video would allow current and future inmates to coordinate wrongdoing that threatens the safety of inmates, deputies, and jail staff. Additionally, the department asserts that disclosure "would effectively allow the public to develop a schematic drawing

of the jail’s existing surveillance and security system, making the jail substantially more vulnerable to internal and external attack.”

## ANALYSIS

### 1. The Access to Public Records Act

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 (MCSD) 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 agency’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

This case involves two of APRA’s discretionary exceptions: (1) Investigatory records of law enforcement agencies; and (2) Records where public disclosure would cause a reasonable likelihood of threatening public safety by exposing vulnerability to a terrorist attack.

## 2. Investigatory records

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

Although APRA does not define "crime," our criminal code defines the term "crime" to mean "a felony or a misdemeanor." Ind. Code § 35-31.5-2-75.

Here, the MCSD invoked the investigatory records exception based on ISP's investigation into an inmate's death. This application is problematic for two reasons.

First, an inmate's death at the county jail is not inherently criminal (i.e., a felony or misdemeanor) in nature. Indeed, criminal culpability may arise in connection with an in-custody death but not always. The investigatory records exception applies to records compiled during the course of the investigation of a crime. There is no indication here of any criminal investigation related to the inmate's death.

Second, the MCSD invoked the investigatory records exception based on ISP's investigation into the inmate's death. The MCSD may rely on the exception to withhold its investigatory records from public disclosure but not based on the existence of a noncriminal investigation by the state police. Without more, APRA's investigatory records exception does not apply here.

Thus, if the investigation into the inmate's death is not criminal in nature, there is no justification for invoking APRA's investigatory records exception.

### **3. Exposing vulnerability to a terrorist attack**

Under APRA, a public agency has discretion to withhold from public disclosure a "record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack." Ind. Code § 5-14-3-4(b)(19). Notably, this exception lists a series of records that are included under (b)(19). *See* Ind. Code § 5-14-3-4(b)(19)(A) to -(L).

This subsection is solely concerned with vulnerability to terrorist attacks, which is not a catch all public safety term. Terrorism is expressly defined in Indiana Code by predicating acts on the use of weapons of mass destruction.<sup>2</sup> It is unlikely that the release of the records, without more, would invite the types of terrorist attacks contemplated by the Indiana General Assembly.

As a result, the exception does not apply here.

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<sup>2</sup> Ind. Code § 35-46.5-2-1.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Madison County Sheriff's Department violated the Access to Public Records Act because the disclosure exceptions the department relied on do not apply here.

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

Luke H. Britt  
Public Access Counselor