
OPINION OF THE PUBLIC ACCESS COUNSELOR

LINDSAY BRINK
Complainant,

v.

HOWARD COUNTY SHERIFF'S DEPARTMENT,
Respondent.

Formal Complaint No.
21-FC-139

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Howard County Sheriff's Department violated the Access to Public Records Act.¹ Attorney Alan Wilson 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 August 30, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

On June 17, 2021, Lindsay Brink (Complainant) filed a public records request with the Howard County Sheriff's Department (HCSO) seeking a list of names for 41 overdose deaths in Howard County in 2017. Specifically, Brink referenced a 2017 media interview where the county coroner acknowledged 41 overdose deaths in the county in that year.

The HCSO acknowledged Brink's request the next week.

On July 21, 2021, the HCSO denied Brink's request. The HCSO stated that the list of names simply did not exist. Brink filed a formal complaint with this office citing the coroner's media interview as proof positive the list existed.

Additionally, Brink submitted another complaint regarding the cost of photos provided on a DVD. Brink contends the Sheriff charged a fee of \$3.00 per photo. The invoice for the photos (and other smaller ticket items) amounted to \$948.30. Brink followed up with a public records request seeking "proof of cost" as a result. The HCSO denied the request, and Brink filed an additional complaint. Brink filed another complaint due to the HCSO charging \$15.00 per physical DVD upon which the photos are transmitted.

For its part, the HCSO submitted its response maintaining the list of overdoses names does not exist. Moreover, it appears as if the material requested was in fact provided after remittance of payment, but it is unclear how much Brink actually paid for the DVDs. HCSO also did not provide any justification for what would have been the \$3.00 per photo fee or the \$15.00 for a DVD.

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 Howard County Sheriff’s Department (HCSD) 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 department’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).

2. Lists of names

In limited circumstances APRA mandates the creation of a public record, none of which apply here. Nevertheless, the media interview involving the county coroner raises an inference that the list Brink requested might possibly exist.

Even still, it is unclear whether Brink requested the list from the county coroner directly (a separately elected official) or why the HCSD would be in possession of such a list. Ultimately, if the HCSD does not have a list of the 41 names

referenced by the coroner, it does not have to create or produce it.

3. Copy fees

Under APRA, if copies of the photos in question are in electronic form, an agency may charge direct cost of producing them. Direct cost means:

- ... one hundred five percent (105%) of the sum of the cost of: (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output; for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

Ind. Code § 5-14-3-2(d). Plainly speaking for this case, direct cost would entail the time necessary for an officer to drag-and-drop these photos from a software program onto a flash drive or DVD. In contrast to video footage from a body worn camera, for example, both of these costs would be negligible and certainly not three-dollars-worth of production.

Every department is different and there is no standard for the direct cost of providing photos, but it stands to reason it is not so much to be a barrier to access or a profit-making measure. Public access to HCSD information is part and parcel of the department's duties and not an add-on expense to the public. It may recoup its costs, but no more.

Similarly, \$15.00 for a DVD seems steep in 2021. At the time of this writing, Amazon advertised a 50-pack of brand name rewritable DVDs for \$14.95. Postage for mailing the disc would cost more than the disc itself.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Howard County Sheriff's Department did not violate the Access to Public Records Act if the list of names sought is not in its possession or does not exist.

However, this office encourages HCSD to take a long, hard look at its fee schedule for photos and discs to bring costs up to legal and modern standards.



Luke H. Britt
Public Access Counselor