
OPINION OF THE PUBLIC ACCESS COUNSELOR

ARIEL DALTON
Complainant,

v.

EDGEWOOD POLICE DEPARTMENT
Respondent.

Formal Complaint No.
21-FC-29

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Edgewood Police Department violated the Access to Public Records Act.¹ Edgewood Town Marshal Andrew Ellingwood 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 March 8, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to an excessive force complaint filed against the Edgewood Police Department (EPD) on December 4, 2020, by Ariel Dalton (Complainant).

On January 20, 2021, Dalton requested—by phone—access to a copy of the excessive force complaint she filed with EPD. During that phone call, EPD told Dalton that there were no records to be released. EPD also advised Dalton to contact her attorney.

As a result, Dalton filed a formal complaint with this office on March 1, 2021, alleging a violation of the Access to Public Records Act.

On March 26, 2021, Edgewood Town Marshal Andrew Ellingwood submitted a response to this office dismissing Dalton's allegations. Ellingwood asserts that when Dalton filed the excessive force complaint, the EPD made notes on a notepad in front of Dalton. Ellingwood contends that EPD later concluded that Dalton's complaint was unfounded. Ellingwood, however, maintains that EPD did not create any formal documentation throughout its review of Dalton's complaint.

Ellingwood asserts that the only physical documentation of Dalton's excessive force complaint is the piece of notepad paper that EPD used at the time it received Dalton's complaint. The EPD argues that it is not obligated to disclose notepad paper because the handwritten nature of the document constitutes work product. The EPD did not cite any statutory authority that would exclude the record from disclosure

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 Edgewood Police Department (EPD) is a public agency for purposes of APRA; and therefore, subject to the law’s 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 EPD’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. Records requests to law enforcement agencies

APRA begins with the general presumption that all public records are disclosable unless an exception applies. Oral requests, like Dalton’s request, are trickier because the law does not require the agency to explicitly cite the disclosure exemption or exception at the time of denial. *See* Ind. Code § 5-14-3-9(d). Toward that end, this office consistently encourages written records requests. A written request better ensures the agency is using the law appropriately in its denials because the agency must cite the legal authority for denying the request.

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

Our legislature granted law enforcement agencies a considerable amount of discretion to withhold sensitive material accumulated during criminal investigations through APRA's investigatory records exception. This scope of the exception is arguably the broadest APRA has to offer. Investigatory record is a term of art, however, and can be easily distinguished from mere "work product," which is not an disclosure exception available to police.

Even so, that discretion is in no way absolute. In fact, the APRA expressly requires a law enforcement agency to document certain activity in a disclosable public record and release it accordingly.

At minimum, a law enforcement agency must document the following:

An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

(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.

Ind. Code § 5-14-3-5(c). Here, there is no dispute that Dalton filed a request for assistance with the EPD and sought documentation as it related to that request. Subsection (c) goes on to mandate the following:

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

Notwithstanding the fact that “work product” of a law enforcement agency is neither an exemption nor an exception to disclosure under APRA, it does not appear that the EPD honored the statutory daily log requirement. EPD would be well-served to implement this practice going forward to ensure compliance with the law.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Edgewood Police Department violated the Access to Public Records Act. APRA's investigatory records exception does not apply to the records requested in this case, and the EPD has not carried its burden of convincing this office that it was in compliance with the law.



Luke H. Britt
Public Access Counselor