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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BRANDON TATE

*Complainant,*

v.

INDIANAPOLIS METROPOLITAN POLICE DEPT.,

*Respondent.*

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Formal Complaint No.

22-FC-20

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Luke H. Britt

Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Indianapolis Metropolitan Police Department (IMPD) violated the Access to Public Records Act.<sup>1</sup> IMPD failed to respond to the complaint despite several invitations to do so. 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 January 6, 2022.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute concerns the amount of time taken by the Indianapolis Metropolitan Police Department (IMPD) to respond to a request for records.

On October 27, 2021, Brandon Tate (Complainant) filed a public records request with IMPD seeking the following:

“Incident” means the shooting and killing of Jessie Leonard at the 500 Block of Eugene Street that occurred on September 24, 2021, at approximately 2:30 p.m.

1. All police reports, incident reports, and witness statements relating to the Incident
2. The entire Internal Affairs Investigation file regarding the Incident
3. The entire Homicide Branch Investigation file regarding the Incident
4. Any other investigative files and documents relating to the Incident
5. Full employee file of: Officer Keith Shelton, Officer Joshua Smith, Officer Joseph Reynolds, Officer Dylan Sheets
6. Full Internal Affairs file of: Officer Keith Shelton, Officer Joshua Smith, Officer Joseph Reynolds, Officer Dylan Sheets
7. All training documents for: Officer Keith Shelton, Officer Joshua Smith, Officer Joseph Reynolds, Officer Dylan Sheets
8. Body and/or dash cam vehicles encompassing all of September 24, 2021 of the following IMPD Officer’s and their vehicles they were operating or were using/in at the time of the Incident: Officer Keith Shelton, Officer

Joshua Smith, Officer Joseph Reynolds, Officer Dylan Sheets

9. Dispatch recordings and CAD/run reports for September 24, 2021 encompassing and/or relating to the Incident
10. All 911 call recordings relating to the Incident and the initial call reporting the vehicle operated by
11. Correspondences relating to the Incident and any investigations related to the Incident
12. All notes, day timers, calendars, journals, diaries, or other documents related to the Incident

Other than the initial acknowledgment of his request on October 27, 2021, the Complainant did not receive any additional status updates from IMPD. The Complainant followed up with the agency on November 10, 2021, and again on November 21, 2021. On November 22, 2021, IMPD told Mr. Tate that it was “working on it.”

On December 15, 2021, Mr. Tate reached out to IMPD again and asked that the agency provide him a specific date when the requested records would be provided to him. IMPD relied that the request should be fulfilled on or before December 31, 2021. Tate filed a formal complaint on January 6, 2022, arguing that IMPD has failed to appropriately respond to his request for records within a reasonable amount of time.

When this office first received Mr. Tate’s formal complaint, we attempted to resolve the issue with IMPD informally, granting the agency some benefit of the doubt given the complexity and size of the request and considering that the agency’s legal unit has been experiencing changes in staff.

After those efforts stalled, on February 9, 2022, IMPD was notified of the formal complaint and asked to respond accordingly. The agency acknowledged receipt of the notice but failed to provide this office with a response to the formal complaint despite the multiple invitations to do so.

## 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 Indianapolis Metropolitan Police Department (IMPD) 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) to -(b).

### 2. Cooperation from public agencies

As a preliminary matter, this opinion will address IMPD’s failure to submit an answer to this office after receiving notice of the formal complaint against it. Indiana Code section 5-14-5-5 expressly states that a “public agency shall cooperate with the [Public Access] Counselor in any investigation or proceeding under this chapter.” Indeed, the chapter referenced in that statute is the one that governs the formal

complaint procedure administered by this office. In other words, public agencies must work with this office in any formal complaint investigation or proceeding.

Here, IMPD failed to provide an answer to the allegations in the formal complaint despite receiving notice and several invitations to do so.

Plainly enough, doing nothing falls short of the cooperation required by the statute. IMPD should be mindful going forward that cooperating with this office necessarily requires—at minimum—a response to a formal complaint and any claims raised in it. Otherwise, this office will presume that the agency does not dispute a complainant's allegations.

Although it would undoubtedly help many respondents facing public access complaints, this office will not form and present arguments on behalf of an agency that fails to respond.

## CONCLUSION

It is the opinion of this office that IMPD violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor

Issued: March 9, 2022.