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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JOHNNY MAGDALENO (INDY STAR)  
*Complainant,*

v.

INDIANAPOLIS METROPOLITAN POLICE DEPT.,  
*Respondent.*

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Formal Complaint No.  
*22-FC-5*

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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 an invitation 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 12, 2022.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This case involves a dispute over redactions made by the Indianapolis Metropolitan Police Department (IMPD) to a 2020 police report.

On October 25, 2021, Johnny Magdaleno (Complainant), a reporter for the *Indianapolis Star*, filed a public records request with IMPD seeking the full police narrative for the following reports involving Malik Halfacre: IP200048456-001; IP200048456-002; IP200048456-003.

On December 10, 2021, IMPD provided Magdaleno with a redacted copy of the media release narrative for case number: IP200048456-003. In his complaint, Magdaleno noted that the document IMPD provided contained less information than the version currently available online through IMPD's CAD portal, which the IndyStar can access.

IMPD argued that it made the redactions in accordance with the Access to Public Records Act's (APRA) investigatory records exception.

Magdaleno argues that IMPD's application of the investigatory records exception is inappropriate in this case because the agency failed to state what crime it was investigating at the time of the incident. Additionally, Magdaleno contends that IMPD did not say if it ever investigated a crime, or if it deployed a specific investigative unit in response to the incident on May 20, 2020. Magdaleno cites *Advisory Opinion 19-FC-73* and *Scales v. Warrick County Sheriff's Department*, 122 N.E.3d 866 (Ind. Ct. App. 2019) in support of his argument.

On January 12, 2022, this office notified IMPD of the complaint by email, and then followed up via email on February 2, 2022, and February 10, 2022. The agency failed to respond 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 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor

Issued: February 22, 2022.