
OPINION OF THE PUBLIC ACCESS COUNSELOR

DIRK ROWLEY (WANE-TV)
Complainant,

v.

FT. WAYNE POLICE DEPARTMENT
Respondent.

Formal Complaint No.
23-FC-11

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Fort Wayne Police Department violated the Access to Public Records Act.¹ City attorney Malak Heiny responded to the complaint allegations via email. 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 26, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

On January 24, 2023, WANE-TV filed a public records request with the Fort Wayne Police Department (FWPD) requesting body camera footage related to an interaction the day before between a police officer and a man involved in a crash that evening.

Three hours later, FWPD denied the request citing the Access to Public Records Act's (APRA) investigatory records exception and law enforcement recording statute.

When Dirk Rowley (Complainant), a reporter with WANE-TV, questioned the FWPD's use of the investigatory records exception, the city claimed that disclosure of the requested records may affect an ongoing investigation.

On January 26, 2023, Rowley filed a formal complaint alleging FWPD violated APRA. Specifically, Rowley argues the department improperly withheld the requested records and misapplied APRA's investigatory records exception.

Initially, FWPD declined to respond to this office regarding Rowley's complaint. FWPD indicated it was preparing to give a presentation to the media about the incident, while also reiterating that the recording was an investigatory record until an exception to the statute no longer applies.

On February 23, 2023, however, after this office inquired about the presentation, the city simply stated that the Allen County Prosecutor's Office was still reviewing the case; and thus, the recording would not be released.

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 Fort Wayne Police Department (FWPD) 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 FWPD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

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

This case involves the applicability of a disclosure exception for law enforcement recordings (i.e., body worn and dash camera recordings).

2. Law enforcement recordings

In general, any person may inspect and copy a law enforcement recording unless one or more of the following circumstances apply:

- (1) Section 4(b)(19) of this chapter applies and the person has not demonstrated that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The public agency finds, after due consideration of the facts of the particular case, that access to or dissemination of the recording:

(A) creates a significant risk of substantial harm to any person or to the general public;

(B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;

(C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency as defined in section 2 of this chapter and notwithstanding its exclusion under section 4(b)(1) of this chapter; or

(D) would not serve the public interest.

However, before permitting a person to inspect or copy the recording, the public agency must comply with the obscuring provisions of subsection (e), if applicable.

Ind. Code § 5-14-3-5.2(a).

3. Denial of disclosure

Here, FWPD denied Rowley's request because the release of the footage, in the agency's opinion, would affect an ongoing investigation.

This office does not take exception with law enforcement's invocation of this exception. The legislature promulgated the exception for a reason. Even so, the law also states that

a discretionary exception cannot be invoked for arbitrary or capricious reasons.²³

What is more, our courts are clear that APRA's burden of nondisclosure is on the public agency.⁴ The same is true in this office. As an adversarial, adjudicative process, the formal complaint procedure provides an agency the opportunity to justify its use of APRA's exemptions and exceptions to disclosure.

Stated differently, this office requires an argument from an agency—at minimum—to evaluate its course of action.

Here, we have a police interaction recorded by both a body worn camera as well as a citizen's recording device. Rowley has a copy of the citizen's recording. It is unclear if the body worn camera would show something different that could compromise any investigation. This office does not make those arguments on the behalf of agencies.

Body worn cameras are useful investigatory tools, but Fort Wayne would be well served to recognize that the footage

² Ind. Code § 5-14-3-9(g)(2).

³ "An arbitrary and capricious decision is one which is 'patently unreasonable' and is 'made without consideration of the facts and in total disregard of the circumstances and lacks any basis which might lead a reasonable person to the same conclusion.'" *A.B. v. State*, 949 N.E.2d 1204, 1217 (Ind. 2011) (quoting *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1091 (Ind. Ct. App. 1998), *trans. denied*).

⁴ "[An agency] meets its burden of proof to sustain its denial of access by proving that the records fall within any one of the discretionary exceptions under Indiana Code section 5-14-3-4(b) and establishing the content of the records with adequate specificity and not by relying on a conclusory statement or affidavit." *Sullivan v. National Election Defense Coalition*, 182 N.E.3d 859 (Ind. Ct. App. 2022).

captured by these cameras is regulated by the Access to Public Records Act and not the public safety statutes. This means the legislature intended the footage to serve a dual purpose as an accountability and accessibility tool.

Under APRA, body worn camera footage is presumptively disclosable—like all public records—and exceptions are not the rule. An agency may invoke an exception, but only with substantive and reasonable justification. Absent a credible qualification, the exceptions cited here ring hollow and are indeed arbitrary.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Ft. Wayne Police Department violated the Access to Public Records Act by failing to carry the agency's burden of nondisclosure as required by law.



Luke H. Britt
Public Access Counselor

Date: May 3, 2023