
OPINION OF THE PUBLIC ACCESS COUNSELOR

RICHARD ZLOTOWITZ,
Complainant,

v.

FISHERS POLICE DEPARTMENT,
Respondent.

Formal Complaint No.
24-FC-50

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Fishers Police Department (FPD) violated the Access to Public Records Act.¹ Lindsey Bennett, corporation counsel, filed an answer for the FPD. 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 July 5, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case, we consider a novel issue of obscuring body worn and dash camera footage of a law enforcement agency.

In May, 2024, Complainant Richard Zlotowitz submitted a public records request to the Fishers Police Department (FPD) for an unredacted copy of a vehicular incident that took place the prior month. The FPD had posted a shorter, unredacted clip online as well.

On June 10, 2024, Zlotowitz received obscured copies of the footage which obscured even the unredacted clip already posted online (the unredacted online was subsequently provided to him).

Zlotowitz takes exception to the FPD's police of obscuring material and how they charge fees. He filed his complaint on July 5, 2024.

For its part, the FPD responded to the formal complaint arguing that the obscured portions of the footage were consistent with Indiana law; and that the fees were transparent and provided to Zlotowitz in advance. FPD uses "light screen redaction", which seemingly blurs the entirety of released videos, but more opaque black boxes will completely obscure mandatory redactions.

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 Fishers Police Department (FPD) is a public agency for the purposes of APRA; and therefore, is subject to 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 FPD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

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

2. Body Worn and Dash Camera Footage

This case concerns the extent to which a law enforcement recording was obscured. While this office has addressed denials of body camera footage, it has not had the opportunity to formally address levels of redaction.

Under APRA, law enforcement recordings—like other public records—are presumptively disclosable. *See* Ind. Code § 5-14-3-5.2. In other words, a public agency must permit any person to inspect or copy a law enforcement recording unless an exception to disclosure applies.

Notably, for purposes of APRA, a law enforcement recording is not an investigatory record. See Ind. Code § 5-14-3-4(b)(1).

Therefore, pursuant to statute, the following must be redacted before releasing footage:

(A) any information that is required to be obscured under section 4(a) of this chapter;

and

(B) depictions of:

(i) an individual's death or a dead body;

(ii) acts of severe violence that are against any individual who is clearly visible and that result in serious bodily injury (as defined in IC 35-31.5-2-292);

(iii) serious bodily injury (as defined in IC 35-31.5-2-292);

(iv) nudity (as defined in IC 35-49-1-5);

(v) an individual whom the public agency reasonably believes is less than eighteen (18) years of age;

(vi) personal medical information;

(vii) a victim of a crime, or any information identifying the victim of a crime, if the public agency finds that obscuring this information is necessary for the victim's safety; and

(viii) a witness to a crime or an individual who reports a crime, or any information

identifying a witness to a crime or an individual who reports a crime, if the public agency finds that obscuring this information is necessary for the safety of the witness or individual who reports a crime; and

(2) may obscure:

(A) any information identifying:

(i) a law enforcement officer operating in an undercover capacity; or

(ii) a confidential informant; and

(B) any information that the public agency may withhold from disclosure under section 4(b)(2) through 4(b)(26) of this chapter.

Ind. Code § 5-14-3-5.2. These redactions are required prior to disclosure, even to a court. Nonetheless, not all of these items will exist in every single video. Nor would every law enforcement interaction necessitate a denial. Again, the statutory presumption of public records, including law enforcement records, is disclosure.

Here, the FPD seemingly layers original footage with “light redaction” to reduce the sharpness of the video, but says the gist of the action can still be seen unless more opaque redactions are necessary to comply with the statute.

This office always recommends a light touch with redactions in any context, and only when necessary to preserve the integrity and confidentiality of the underlying information. We have not reviewed the footage in question, however, if it is indeed the policy of FPD to alter all footage with

blurring, a plain reading of the statute would not support such a practice. By all means, sensitive footage and specific subject matter should be obscured (or in some cases denied), but not the remainder.

If a public record contains disclosable and non-disclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying.

Ind. Code § 5-14-3-6.5(a). Here, it appears as if the remainder is also altered, which is not supported by the Access to Public Records Act. Pinpoint redactions are less convenient and efficient, to be sure. Ensuring transparency can indeed be frustrating business, but nonetheless crucial to maintaining fidelity to the law.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Fishers Police Department may be obscuring otherwise disclosable footage from body worn and dash cameras. If that is the case, it should consider amending its policy.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

Issued: September 30, 2024