
OPINION OF THE PUBLIC ACCESS COUNSELOR

ANDREW SMITH,
Complainant,
v.
DELAWARE COUNTY SHERIFF'S OFFICE,
Respondent.

Formal Complaint No.
25-FC-006

Jennifer G. Ruby
Public Access Counselor

RUBY, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Delaware County Sheriff's Office violated the Access to Public Records Act¹ (APRA). Sheriff Tony Skinner filed a response to the complaint on behalf of the department. In accordance with I.C. 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 27, 2025.

BACKGROUND

This complaint involves disputes about the applicability of the investigatory records exception under the Access to Public Records Act (APRA).

On July 9, 2024, Andrew Smith sent an email to the Delaware County Sheriff's Office requesting copies of various records pertaining to the Cy Alley murder investigation. The request sought copies of the following records:

- 1) Interviews or interrogations in video format
- 2) Initial 911 call (audio only)
- 3) Bodycam footage of initial arrest (if available)
- 4) Police reports (if available)
- 5) Crime Scene Photos of Evidence

¹ Indiana Code (IC) 5-14-3-1 to 10.

On December 31, 2024, Captain Rick Richman responded on behalf of the Delaware County Sheriff's Office. Richman informed Smith that the request for records was denied because the records he was seeking were investigatory records of a law enforcement agency.

Smith (Complainant) filed a formal complaint with this office on January 27, 2025. To be filed timely, a complaint must be filed with this office no later than thirty days after the denial. IC 5-14-5-7(a). This complaint was filed timely.

Complainant argues that the Delaware County Sheriff's Office (Respondent) failed to timely respond to his complaint and didn't deny the records request until the December response. He further argues that the record request was erroneously denied, in its entirety, under the investigatory exception even though a jury trial had taken place and was final.

The Office of the Public Access Counselor (OPAC) sent formal notice of this complaint to the Respondent on February 4, 2025.

Respondent, through Sheriff Tony Skinner, submitted its formal response on February 24, 2025, stating that the Respondent had in fact granted the request in part, denied the request in part, and explained that Respondent was not in possession of certain records as requested.

The response stated that Respondent had provided a copy of the probable cause affidavit to Smith as requested on January 27, 2025. The response directed Complainant to the Delaware Circuit Court for copies of exhibits that were offered at trial since Respondent did not have those documents. The response further stated that all other records were being excluded under the investigatory records exclusion of I.C. 5-14-3-4(b)(1).

ANALYSIS

1. The Access to Public Records Act (APRA)

The Access to Public Records Act (APRA) states that "(p)roviding persons with information is an essential function of a representative government I.C. 5-14-3-1. and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information..."

Respondent, the Delaware County Sheriff's Office, is a public agency for purposes of the APRA, and therefore subject to its requirements. I.C. 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent's public records during regular business hours. I.C. 5-14-3-3(a).

APRA does contain exceptions-- both mandatory and discretionary --to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. I.C. 5-14-3-4(a). In addition, APRA lists other types of records that may be excepted from disclosure at the discretion of the public agency. I.C. 5-14-3-4(b).

2. Investigatory Records Exception

APRA provides law enforcement agencies with the discretion to withhold investigatory records from public disclosure. I.C. 5-14-3-4(b). There is no dispute that Respondent is a law enforcement agency for purposes of the investigatory records exception. I.C. 5-14-3-2(q)(6). That means that Respondent has discretion to withhold the agency's investigatory records from public disclosure.

APRA defines "investigatory record" as "information compiled in the course of the investigation of a crime." I.C. 5-14-3-2(i). In other words, APRA speaks to information gathered, accumulated or prepared in or during the investigation of a crime. The burden is on the public agency to predicate a denial of public disclosure with specificity and not by relying on a conclusory statement. I.C. 5-14-3-9(g)(1)(B).

Law enforcement agencies will sometimes dismiss a request because the agency interprets the investigatory records exception so broadly as to encompass every aspect of the documented law enforcement activity. This is not consistent with the law. While broad, the application of discretion must not be arbitrary or capricious. It must be based on a good faith application of the statutory exception.

Here Respondent responded by providing one document directly to Complainant, referred Complainant to another agency for additional records, and then, denied the remainder of the request under the investigatory records exception. The denial did not state under what specific grounds that the E-911 or the bodycam recordings were being excepted from disclosure. It therefore is assumed that the entirety of the recordings were deemed investigatory records subject to exclusion. This is not consistent with statutory provisions or case law.

3. Law Enforcement Recordings: Bodycam

Investigatory records and law enforcement recordings are treated as mutually exclusive records in terms of access under APRA.

When considering bodycam footage I.C.5-14-3-4(b)(1) states that "a law enforcement recording is not an investigatory record".

Generally, any person may inspect and copy a law enforcement recording unless one or more of the statutory exceptions apply. I.C. 5-14-3-5.2(a)(2) Exemptions To Right of Inspection states:

(a) A public agency shall permit any person to inspect or copy a law enforcement recording unless one (1) or more of the following circumstances apply:

(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 recording of a law enforcement agency as defined in section 2 of this chapter and notwithstanding its exclusion under section 4(b)(1) [Investigatory Records] 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 (f), if applicable.

As the subject of the APRA request is an alleged murder, one or more of the above exceptions may have applied.

However, Respondent did not cite specifically that the bodycam recording fell within the specific exclusion or that Respondent was unable to redact the recording pursuant to I.C. 5-14-3-5.2(e). The response by Respondent only referenced that bodycam recording was part of the request but provided no reasons specifically excluding the recording. There was not acknowledgement that a recording even existed.

4. E-911 Recordings

Generally, any person may inspect and copy a law enforcement recording unless one or more of the statutory exceptions apply. I.C. 5-14-3-5.2(a) [as above]. When considering E-911 recordings I.C. 5-14-3-4(b)(1) states that “a law enforcement recording is not an investigatory record”.

A separate 911 call center and public agency may not even qualify as a law enforcement agency under the APRA for purposes of the exclusions available to such agencies. In *ESPN, Inc. v. Univ. of Notre Dame Police Dept*, 62 N.E.3d 1192, 1197 (Ind. 2016) the Indiana Supreme Court held that the APRA plain language dictates that in order for an entity to be a “law enforcement agency” for purposes of APRA, the entity must be (1) “of any level of government; and (2) it must engage in the law enforcement functions identified (investigation, apprehension, arrest, or prosecution of alleged criminal offenders).”

Undoubtedly, the E-911 call center is a public agency as contemplated by APRA. There is doubt that its functions rise to the level of law enforcement functions outlined above to fall within the definition of a “law enforcement agency”. Therefore, there may not be an exclusion available to the 911 dispatch center to deny disclosure under APRA.

Respondent did not detail with specificity why a copy of the E-911 recordings were not released to Complainant. These recordings were denied based upon the blanket response that they fell under the investigatory records exclusion.

The response did not categorize the E-911 center as being separate from the Sheriff’s Office or as being under the jurisdiction of that office. In either situation the E-911 recordings were subject to disclosure unless a specific exception applied. There were no indications in the response that such a recording even existed.

5. Constructive Denial and Timeliness

Complainant argues that Respondent failed to respond in a timely manner to his record request of July 9, 2024.

Complainant characterizes the first denial of his records request as the December 31, 2024, email from Respondent. Respondent characterizes the first denial of the records request as the date seven (7) days after the written request was filed and no response was made.

APRA provides that a denial of disclosure by a public agency occurs when a written request for records is made and no response to that request is provided by the requestor in the following seven (7) days. I.C. 5-14-3-9 (c).

Here Respondent did not acknowledge or deny the request for records and therefore after seven (7) days the request was deemed denied. Respondent acknowledged that its response was delayed due to a routing error and is “currently revising its policies to avoid this type of delay in the future”.

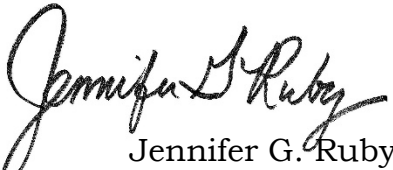
APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. I.C. 5-14-3-3(b). Notably, APRA does not define “reasonable time”.

On December 31, 2024, Respondent by Captain Rick Richman submitted a response to Complainant pursuant to I.C. 5-14-3-9(d) by submitting it in writing and a statement of the specific exemption or exemptions that support the denial and the name and title of the person responsible for the denial. I.C.5-14-3-(9)(d). The denial was based primarily upon the investigative record exception.

While the December 31, 2024, denial provided additional context, the denial had in fact been made in July 2024 due to lack of response to the record request. Therefore, Respondent did not take unreasonable time to respond to the request.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Respondent, the Delaware County Sheriff’s Office, violated APRA by failing to specifically identify the reasons for denying access to copies or viewing of both the bodycam recordings and the E-911 recordings. It is also the opinion of this office that the Delaware County Sheriff’s Office did not violate the requirement that it provide records in a timely manner. However, the Delaware County Sheriff’s Office has acknowledged they are revising their policies.


Jennifer G. Ruby
Public Access Counselor

Issued: October 30, 2025