



STATE OF INDIANA

MIKE BRAUN, Governor

PUBLIC ACCESS COUNSELOR
BRITTNEY A. LONG

Statehouse Room 105
200 West Washington Street
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
Toll Free: 1-800-228-6013
Email: pac@opac.in.gov
Website: www.IN.gov/pac

October 21, 2026

Re: Complaint 26-FC-150
Alex Smith (Complainant) v.
Town of Plainfield (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed on March 25, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on April 9, 2026, requesting a formal response by May 8, 2026. A formal response, submitted by Ashley Ulbricht, counsel, on behalf of Respondent, was received in this office on May 6, 2026.

The complaint alleges that the Respondent violated the Access to Public Records Act (APRA) when it improperly denied the request.

ANALYSIS

The public policy of 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." IC 5-14-3-1.

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

On March 2, 2026¹, the Complainant filed an APRA request, on behalf of Midwest Safety², with Respondent requesting:

1. Dashcam, bodycam, and related records from January 9, 2025 incident pertaining to a specific criminal case.

¹ The March 2, 2026 request has not been provided and is only referenced in the complaint.

² Midwest Safety has a YouTube channel.

Respondent provided Complainant with a response letter denying the request and citing Plainfield Town Council Ordinance No. 25-2023 (Ordinance) which prohibits commercial use of records.

Complainant appealed the denial. Respondent responded on March 24, 2026 reiterating its denial based upon the Ordinance and provided additional support for denying the request. Respondent provided the following:

- 1) Indiana Code 5-14-3-3(e) and the Ordinance
- 2) Indiana Code 5-14-3-4(b)(1)
- 3) Indiana Code 5-14-3-4(b)(6)
- 4) Indiana Code 5-14-3-4(b)(21)
- 5) Indiana Code 5-14-3-4(b)(27) and 5-14-3-5.2

This office will analyze each denial.

A public agency denying access to public records must provide the denial in writing and it must be accompanied by:

- (A) A statement of the specific exemption or exemptions authoring the withholding of all or part of the public record; and*
- (B) The name and title or position of the person responsible for the denial.*

IC 5-14-3-9. “[T]here are no magic words to make a denial proper under APRA, so long as exceptions to disclosure are explicitly stated along with the name and position of the person responsible for the denial.” *Opinion of the Public Access Counselor 23-FC-106.*

Indiana Code 5-14-3-3(e) and the Ordinance

Indiana Code 5-14-3-3(e) provides that:

A state agency may adopt a rule under [IC 4-22-2](#), and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under

subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

On August 14, 2023, Plainfield enacted the Ordinance pursuant to IC 5-14-3-3(e), which prohibits a person from using APRA requested records or information for commercial purposes.

This office has pointed out previously, the only reference to denying a request in subsection 3(e) is for the following: “A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).” *See Opinion of the Public Access Counselor 11-FC-150*. This office further added, “the provision does not appear to permit agencies to deny requests based on the expected use of the requester; rather, it is only after a requester has used information for commercial purposes *in violation of the conditions prescribed by the public agency* that the agency may prohibit the requester from receiving additional information.” *Id. Emphasis added.*

Here, Respondent has not alleged Complainant has used information received by Respondent in violation of its own Ordinance. Therefore, IC 5-14-3-3(e) does not support Respondent’s denial of Complainant’s APRA request.

Indiana Code 5-14-3-4(b)(1)

Indiana Code 5-14-3-4(b)(1) provides an exception for producing records under APRA regarding investigatory records. Respondent states that “portions” of Complainant’s request would fall under this exception. However, Respondent does not specify which records. “A law enforcement recording is not an investigatory record” for purposes of IC 5-14-3-4(b)(1).

Complainant requested “dashcam, bodycam, and related records.” Therefore, the dashcam and bodycam would not fall within this exception. It is unclear as to whether “related records” would or not.

This exception does not support Respondent’s denial of Complainant’s request for dashcam and bodycam. It could very likely cover the denial to release “related records.”

Indiana Code 5-14-3-4(b)(6)

Indiana Code 5-14-3-4(b)(6) provides an exemption for records that are,

“[r]ecords that intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.”

Respondent asserts “portions” of the records sought in the request meet this exception. However, Respondent does not specify which records fall within this exception.

APRA requires that if a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under APRA, separate the material that may be disclosed and make it available for inspection or copying. IC 5-14-3-6(a).

From Respondent’s own response it recognizes that “portions” of the records would fall under this exception, but it does nothing to meet its statutory burden of separating disclosable and nondisclosable material. Furthermore, it has failed to meet its burden to establish that no part of the requested and responsive records could be separated and disclosed pursuant to statute. See *Opinion of the Public Access Counselor 04-FC-053*.

Indiana Code 5-14-3-4(b)(21)

Indiana Code 5-14-3-4(b)(12) provides an exception for,

“the following personal information about a complainant contained in records of a law enforcement agency:

(A) telephone number;

(B) the complainant’s address.

However, if the complainant’s address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.”

Respondent asserts “portions” of the records requested “contain personal information about a complainant contained in records of a law enforcement agency.” Again, Respondent does not specify which records it is referring to.

This exception does not permit Respondent to withhold the entire record. The statute reflects the most the Respondent can withhold under this exception: the telephone number and address (in most cases) of the complainant. *Opinion of the Public Access Counselor 23-FC-111*.

Indiana Code 5-14-3-4(b)(27) and 5-14-3-5.2

Indiana Code 5-14-3-4(b)(27) provides an exception for APRA disclosure,

“except as provided in subdivision (19) and sections 5.1 and 5.2 of this chapter, a law enforcement recording. However, before disclosing the recording, the public agency must comply with the obscuring requirements of sections 5.1 and 5.2 of this chapter, if applicable.”

Subdivision 19 pertains to records, that if disclosed to the public, would have a “reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack.” IC 5-14-3-4(b)(19). This provision does not appear to be applicable in this matter.

Section 5.1 provides the public agency shall permit inspection of law enforcement recordings by the person depicted in the recording, or its statutorily defined designee. IC 5-14-3-5.1. This provision does not appear to be applicable in this matter.

Section 5.2 provides the “*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 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.”*

Respondent states that “portions” of the records requested do not fall within any exceptions provided for within IC 5-14-3-4(b)(27). Specifically, Respondent notes that, per its knowledge, Complainant does not qualify as a “requester” as defined in IC 5-14-3-5.1. Respondent does encourage Complainant to notify them if he actually does meet the definition.

Respondent denies the portion of the request for “law enforcement records” pursuant to IC 5-14-3-5.2(a)(2)(B) and (D). It states that “after due consideration of the facts of the particular case, that access to or dissemination of the recording 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, and does not serve the public interest.”

This office notes the records requested were from an incident on January 9, 2025. In documentation provided with the complaint, the court’s CCS shows that the criminal case related to the records request was decided on June 3, 2025. Therefore, there is no trial for the dissemination of the material to interfere with. So, this reason for denial will turn on what is considered to “not serve the public interest.”

“Notably, statutes governing public access to law enforcement recordings are inarguably favorable to law enforcement. Agencies enjoy considerable discretion to limit what footage the public can see.” *Opinion of the Public Access Officer 22-FC-107*. However, the law provides protection so that public agencies cannot apply the exceptions “arbitrarily or capriciously.” *Id.* See IC 5-14-3-9(g)(B)(2).

This office has previously opined when footage requested is of a police action shooting, “there can be little doubt that the public’s interest would be served by clarifying the events,” and disclosing the recording would accomplish that end. *Opinion 22-FC-107*. Based upon the information provided in this complaint, the criminal matter is related to battery with bodily injury to a police officer and resisting law enforcement, among similar charges.

“APRA requires a preponderance of the evidence to justify denial of access to body camera footage. While this office does not authenticate evidence or sworn testimony, an argument akin to a preponderance (i.e., a greater than 50% chance that the claim is true) should be attempted.”

Id. Furthermore, Indiana courts have held that,

“The agency meets its burden of proving it properly exercised a discretionary exception by proving that the record falls within any of the categories of excepted records under section 5-14-3-4(b) and, again, ‘establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.’ Ind. Code 5-14-3-9(g)(1)(B).”

Sullivan v. National Election Defense Coalition, 182 N.E.3d 859 (Ind. Ct. App. 2022). Relied upon in *Opinion 22-FC-107*.

While Respondent correctly cites a legal standard, it fails to carry its burden of persuasion that the disclosure exception applies in this case. Respondent does not establish the content of the record with any specificity. It is merely relying upon a conclusory statement that the recordings “would not serve the public interest.”

CONCLUSION

Based upon the foregoing, it is the opinion of this office the Respondent cannot rely upon any of the exceptions provided to support its withholding of the entire requested record. Respondent has a statutory obligation to separate the disclosable information from any nondisclosable information and produce the disclosable information.

A handwritten signature in black ink, appearing to read "Brittney A. Long", is written over the printed name and title.

Brittney A. Long
Public Access Counselor