



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

January 2, 2020

Robert M. Sklar  
116 W. Main St.  
North Manchester, IN 46962

**Re: Informal Complaint 19-INF-23**

Dear Mr. Sklar:

This letter is in response to the formal complaint you filed against the North Manchester Police Department alleging violations of the Access to Public Records Act. This office received your complaint November 13, 2019. We forwarded your complaint to the NMPD. The agency's response is enclosed for your review.

I have written to you in the past expressing my inability to weigh in on these matters formally due to a statutory provision found at Indiana Code section 5-14-4-10(6). It states:

...the counselor may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under IC 5-14-1.5 or IC 5-14-3.

There are pending lawsuits in this case as of the writing of this letter. The records you seek are immediately germane to those lawsuits as subpoenas have been issued and motions to quash submitted. This office has a strict policy of declining to interfere with a court's sovereign jurisdiction over discovery disputes. No exceptions are made and this policy is implemented consistently.

Informally, I will reiterate my opinion that license plates are not confidential, even when coupled with other identifying information. I remain perplexed as to why NMPD continues to take this position and insists upon redaction. The department did not provide any statutory authority to do so, which is a requirement of Indiana Code section 5-14-3-9(d). It appears as if the records you want to inspect should be provided for inspection free of charge. Again, however, this is a matter for a judge to ultimately decide in this instance. NMPD has the burden of proof to demonstrating why any redactions were necessary.<sup>1</sup>

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<sup>1</sup> Ind. Code § 5-14-3-9(f): The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

To be fair, I did tell NMPD in an email on November 13, 2019 that I would entertain an argument on the privacy considerations of driver's information, but I remain unconvinced based upon their response.

As a final aside, I am troubled by NMPD's statement to you on November 15, 2019, suggesting the Indiana Code only gives examples of records that are able to be withheld at an agency's discretion. This is most certainly not the case. An agency must have legal authority to withhold a public record or information from disclosure, which is generally established by statute. The Access to Public Records Act is not merely a perfunctory suggestion or guideline. It is exhaustive in every sense of the word. I strongly suggest the NMPD realign its perspective on access to records in a manner consistent with the law.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LHB', with a stylized flourish extending from the bottom.

Luke H. Britt  
Public Access Counselor

Cc: Matthew Mize