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RE: 21-INF-6; Disclosure of juvenile law enforcement records

This informal opinion examines whether a law enforcement agency has the authority under the Access to Public Records Act and other applicable statutes to release juvenile law enforcement records to a public school official upon request.

You inquire specifically as to whether a juvenile referral for minor in possession of alcohol should have been disclosed to the juvenile's school. You suspect the school's athletic director requested—either unilaterally or through the school resource officer—and obtained the juvenile's investigatory report from the sheriff's department. You contend the school used the information as the basis for the student's suspension.

1. Access to Public Records Act (APRA)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. The Access to Public Records Act (APRA) says "(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." *Id.*

2. Juvenile law enforcement records

This inquiry explores the intersection of access to juvenile law enforcement records and schools seeking that information.

In general, juvenile law enforcement records are confidential. Ind. Code § 31-39-3-4(a). A law enforcement agency is required to take appropriate actions to protect the records from unauthorized disclosure. Ind. Code § 31-39-3-4(b). At the same time, certain juvenile law enforcement records are subject to public disclosure. *See* Ind. Code §§ 31-39-3-2 to -3. For instance, the following information contained in records involving allegations of delinquency that would be a crime if committed by an adult is considered public information:

(1) The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved.

(2) The identity of any victim.

(3) A description of the method of apprehension.

(4) Any instrument of physical force used.

(5) The identity of any officers assigned to the investigation, except for the undercover units.

(6) The age and sex of any child apprehended or sought for the alleged commission of the offense.

(7) The identity of a child, if the child is apprehended or sought for the alleged commission of:

(A) an offense over which a juvenile court does not have jurisdiction under IC 31-30-1-2 and IC 31-30-1-4; or

(B) an act specified under IC 31-30-3-3.

Ind. Code § 31-39-3-2. Here, a student at a public school received a juvenile referral from a Dubois County Sheriff’s deputy for allegedly committing the offense of being a minor in possession of alcohol, which is a Class C misdemeanor under Indiana Code section 7.1-5-7-7(a). Notably, for purposes of this offense, a “minor” is a person under 21 years of age. Ind. Code § 7.1-1-3-25.

As a result, the pieces of information listed above are disclosable to the public (including a school or school administrator) if the case involves allegations of juvenile delinquency that would be a crime if committed by an adult.

In this case, the law is ambiguous. Indeed, as counterintuitive as it may seem, a person who is otherwise an adult under the law can, at least ostensibly, still be charged with illegal possession of alcohol by a minor if that person is under 21 years of age. The statutory ambiguity is based on the definitions of “adult”¹ in Title 31 and “minor”² under Title 7.1.

According to your inquiry, you believe the school’s athletic director—acting alone or through the school resource officer—requested and obtained the juvenile law enforcement records related to the minor in possession referral you referenced. Although the prosecutor did not file a delinquency petition, the school ultimately suspended the student.

2.1 Persons entitled to juvenile law enforcement records

Even if the public disclosure provision explored above does not apply to the juvenile law enforcement records at issue here, there are people and entities that are entitled to access the records despite their confidentiality.

¹ Ind. Code § 31-9-2-7(a) to -(c).

² Ind. Code § 7.1-1-3-25.

First, law enforcement records involving allegations that a child is a delinquent child are available, without specific permission from the head of the law enforcement agency, to:

- a law enforcement officer acting within the scope of his or her lawful duties;
- the judge of the juvenile court or any authorized staff member;
- to any party to a juvenile court proceeding and the party's attorney;
- the judge of a court having criminal jurisdiction or any authorized staff member if the record is to be used in a presentence investigation in that court;
- the prosecuting attorney or any authorized member of the staff of the prosecuting attorney;
- the attorney for the county office of family and children or any authorized staff member

Ind. Code §§ 31-39-4-2 to -7. Primary and secondary schools, public or private, are not included in the list of those entitled to access confidential juvenile law enforcement records without specific permission from the head of a law enforcement agency. Even so, a school resource officer acting within the scope of their lawful duties likely would have access to those records without specific permission.

Although this opinion will not explore whether a SRO would be acting within the scope of their official duties by obtaining and sharing the juvenile records at issue here, SROs are governed by statute. *See* Ind. Code §§ 20-26-18.2-1 to -5.

Second, the head of a law enforcement agency or their designee may grant any person having a legitimate interest in the work of the agency or in a particular case access to the agency's confidential records. Ind. Code § 31-39-4-8(a). In exercising this discretion, the head of a law enforcement agency must consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about:

- (1) the identity of anyone charged with the alleged commission of any act that would be murder or a felony if committed by an adult; and
- (2) the identity of anyone charged with the alleged commission of an act that would be part of a pattern of less serious offenses.

Id. Notably, a person granted access to records under this provision is not bound by confidentiality provisions and may disclose the contents of the records. Ind. Code § 31-39-4-8(b). The head of a law enforcement agency also has discretion to grant access to confidential juvenile law enforcement records in other circumstances that are not relevant here. *See* Ind. Code §§ 31-39-4-9 to -11.

In the context of disclosure, this statute renders disclosure of confidential juvenile law enforcement records discretionary under certain circumstances. Thus, a county sheriff, police chief, or town marshal could choose to grant access to an interested person so long as there is a legitimate purpose for doing so and the decision is in the best interests of the community's safety and welfare.

Arguably, a school may have a legitimate purpose in obtaining the records at issue here, however, it is outside the scope of this office to make a declaratory statement as to that question. Indeed, a school has statutory authority to suspend a student for engaging in unlawful activity off school grounds if certain conditions are satisfied. Ind. Code § 20-33-8-15. Even so, this office cannot address that issue.

Notably, however, there is no prohibition on requesting nondisclosable records. The law does not impose any sanction or penalty for seeking records that would otherwise be off limits. Therefore, the school is likely not at risk of any discernable liability or violation of the law for commissioning a school resource office to obtain records from the sheriff.

3. Conclusion

Even though juvenile law enforcement records are generally confidential under Indiana law, there are times where the public has limited access to certain records, and times where specific people and entities have access without specific permission from the head of a law enforcement agency. Additionally, the law bestows the head of a law enforcement agency with discretion to disclose confidential juvenile law enforcement records under certain circumstances.

Based on the information provided, one of these disclosure mechanisms may—and likely does—apply to juvenile records at issue here. As a result, the disclosure is more than likely permissible under the law. Conversely, the propriety of the school’s reliance on those records as the basis for a student suspension related to alleged unlawful activity off school grounds is not a question this office can address.

Please do not hesitate to contact me with any questions.

Best regards,

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

Luke H. Britt
Public Access Counselor