



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

TINA SCOGGINS)	
)	
Complainant,)	
)	
v.)	17-FC-122
)	
FLOYD COUNTY SHERIFF'S DEPT.)	
)	
Respondent.)	

ADVISORY OPINION July 7, 2017

This advisory opinion is in response to the formal complaint alleging the Floyd County Sheriff's Department ("Sheriff") violated the Access to Public Records Act ("APRA"). Ind. Code §§ 5-14-3-1-10. Sheriff Frank Loop responded on June 13, 2017. 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 May 30, 2017.

BACKGROUND

On May 30, 2017, Tina Scoggins ("Complainant") filed a formal complaint alleging the Sheriff violated APRA by improperly denying her access to a public record and failing to issue a denial in writing.

The Complainant submitted a written records request on January 5, 2017, where she asked to review or receive a copy of video captured by surveillance cameras at the entrance doors of the Floyd County Courthouse on December 29, 2016, between the hours of 12:00 p.m. and 2:35 p.m. Ms. Scoggins also asked to view any camera footage, from that same time frame, showing the fourth floor elevator area. The Complainant contends that Floyd County Sheriff's Detective Furman called her to ask why she wanted to see the video footage. She claims that after declining to provide the detective a reason, he denied the request. Faced with an outright denial, the Complainant relented and explained that she wanted to verify some information she had been provided by a court employee. Ms. Scoggins claims Detective Furman again



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denied the request despite her explanation. The Complainant claims—and the Sheriff does not dispute—that Detective Furman stated that the Sheriff never discloses general surveillance footage because it could expose vulnerability to a terrorist attack or other security concerns.

Sheriff Loop further asserts that the Complainant did not contact him to voice her concerns and the issue never came to his attention. Although the Sheriff does not dispute that Detective Furman denied the Complainant's request to view the surveillance footage, he rejects the claim that the denial violates APRA. Specifically, the Sheriff points to Indiana Code sections 5-14-3-4.4(a)(1)–(2) as justification for the denial.

Lastly, even if the denial was a violation of APRA, the Sheriff has stated that the video footage no longer exists because the surveillance system automatically records over the existing footage after 90 days.

ANALYSIS

The public policy of the 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 Floyd County Sheriff's Department is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the Floyd County Sheriff's Department disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

A denial *must* include a statement of the specific statutory reason for the nondisclosure of the information and the name and title—or position—of the individual responsible for the denial. Ind. Code §§ 5-14-3-9(d)(2)(A)–(B).

As an initial matter, this complaint does not meet timeliness standards required by statute. Formal complaints must be filed within 30 days of the denial. Ind. Code § 5-14-5-7. Therefore, this opinion is educational only, but the issues raised in the complaint warrant comment.

Indiana Code § 5-14-3-4.4 states in relevant part:

This section applies to a request for a record that the public agency considers to be excepted from disclosure under section 4(b)(1) or 4(b)(25) of this chapter. The public agency may do either of the following:



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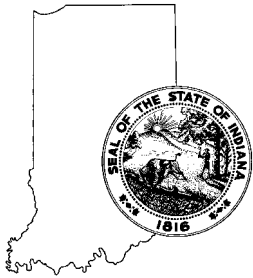
- (1) Deny disclosure of the record or a part of the record. The person requesting the information may appeal the denial under section 9 of this chapter.
- (2) Refuse to confirm or deny the existence of the record, regardless of whether the record exists or does not exist, if the fact of the record's existence or nonexistence would reveal information that would:
 - (A) impede or compromise an ongoing law enforcement investigation or result in danger to an individual's safety, including the safety of a law enforcement officer or a confidential source; or
 - (B) reveal information that would have a reasonable likelihood of threatening public safety.

In order for section 4.4 to apply, it must be defined as a law enforcement investigatory or criminal intelligence record. Under APRA, "investigatory record" is defined as information compiled *in the course of the investigation of a crime*. Ind. Code § 5-14-3-2(i)(Emphasis added). A criminal intelligence record means data that has been evaluated to determine that the data is relevant to: the identification of; and the criminal activity engaged in by; an individual who or organization that is reasonably suspected of involvement in criminal activity. Ind. Code § 5-14-3-4(c).

Neither of these definitions apply to fixed general surveillance video captured during routine surveillance of a common area of a public agency. Indeed, general surveillance footage may transform into one of those categories if certain activity is captured, however, that does not appear to be the case in the current instance. Nor does it meet the criteria of a law enforcement recording under APRA. *See* Ind. Code § 5-14-3-2(k) (i.e. dash cams and body worn cameras).

The video footage should not have been denied when the request was made, nor should it be denied as such in the future. In the experience of this Office, courthouse (and other public building) surveillance footage is regularly released throughout the State. The Sheriff has offered no reason why the footage would be so sensitive as to exclude the video from public inspection. If the video footage had depicted clandestine security protocols, sensitive mechanicals, or non-common areas, then the analysis may be different.

The Complainant requested video footage from December 29, 2016. General surveillance videos have a 30 day retention mandate under the Indiana Archives and Records Administration's county and local retention schedule. It can be accessed at www.in.gov/iara. At the time of the request, the Sheriff was not on notice about whether the request would be submitted to this Office for review. Therefore, the Sheriff was



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not obligated to ensure the retention of the footage past the retention mandate. Undoubtedly, this situation further highlights the importance of timeliness concerning formal complaints to this Office.

Please do not hesitate to contact me with any questions.

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Public Access Counselor

Cc: Sheriff Frank Loop