

## Insights

### Investigatory Records Exception to Indiana's Access to Public Records Act ("APRA") Analyzed by Court of Appeals

---

April 30, 2019

By: Christopher W. Bloomer and Robert S. Schein

Few statutes contain a clearer enumerated purpose than Indiana's Access to Public Records Act or "APRA." Passed originally in 1983, the Legislature found that providing persons with information is an essential function of representative government, as "government is the servant of the people and not their master."<sup>1</sup> While there are certain mandatory and discretionary exceptions to records disclosure,<sup>2</sup> if such an exception does not apply, the APRA mandates governmental disclosure.<sup>3</sup>

Though regularly analyzed by Indiana's Public Access Counselor ("PAC") by way of formal and informal opinions,<sup>4</sup> courts do not often have occasion to settle disputes between records requestors and governmental bodies. Courts have had even fewer occasions to analyze a subcategory within the discretionary exceptions – the investigatory records exception, which provides the local unit discretion to withhold records if the records are "compiled in the course of the investigation of a crime."<sup>5</sup>

That changed with the recent decision in *Scales v. Warrick Cty. Sheriff's Department*.<sup>6</sup> In *Scales*, Plaintiff sought information relating to his deceased daughter, whose death had been ruled an accident, and the case file closed. However, in response to Plaintiff's APRA request, the Warrick County Sheriff denied the same, claiming the records were investigatory in nature, and could therefore be withheld based on the APRA's investigatory records exception. Using the plain language of the statute, which defines investigatory records as those which are compiled during the course of the investigation of "a crime," the Court had little hesitation finding the records at-issue must be produced because there was no criminal investigation, the search for the decedent was at all times classified as a missing person's investigation, and there were no criminal indictments or information ever issued. Unlike other cases wherein the investigatory exception *did* apply,<sup>7</sup> put simply, the Sheriff's Department did not meet its burden of persuasion as required by the APRA.<sup>8</sup>

To promote the APRA's objectives of transparent government, as well as to avoid reputational harm and the possible imposition of litigation fees and costs,<sup>9</sup> local units are cautioned to ensure an appropriate mandatory or

discretionary exception applies when considering whether or not to withhold a public record.

*Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.*

[1] Ind. Code § 5-14-3-1.

[2] Mandatory nondisclosure items may not be disclosed by the local unit, and include, among other records, trade secrets, grade transcripts, medical records, and social security numbers. Ind. Code 5-14-3-4(a). Discretionary nondisclosure items may be withheld based on the policies of the local unit, and include, among other records, attorney work product, test questions and scoring keys, diaries, journals, and other personal notes, school safety and security measures, and deliberative material. Ind. Code § 5-14-3-4(b).

[3] Ind. Code § 5-14-3-1.

[4] The PAC is charged with providing advice and assistance concerning Indiana's public access laws, including the APRA and the Open Door Law. The Open Door Law is embodied in Ind. Code 5-14-1.5-1.

[5] Ind. Code § 5-14-3-2(i).

[6] *Scales v. Warrick Cty. Sheriff's Dep't.*, No. 18A-MI-1590, 2019 WL 1646486, at \*1 (Ind. Ct. App. Apr. 17, 2019)

[7] *Heltzel v. Thomas*, 516 N.E.2d 103 (Ind. Ct. App. 1987) (the subject victim *may* have been part of a criminal investigation); *Althaus v. Evansville Courier Co.*, 615 N.E.2d 441 (Ind. Ct. App. 1993) (coroner's report did not make it clear that alleged suicide did not involve criminal conduct); and *Lane-El v. Spears*, 13 N.E.3d 859 (Ind. Ct. App. 2014) (convicted criminal sought records related to criminal investigations).

[8] *Scales*, 2019 WL 1646486 at \*5.

[9] Though not at-issue in this case, an aggrieved records requestor may petition for attorneys' fees, court costs, and other litigation expenses, and is entitled to the same if he or she "substantially prevails" and seeks and receives an informal inquiry response or advisory opinion from the PAC, except in certain limited situations. Ind. Code § 5-14-3-9(i).