

STATE OF INDIANA)	ST. JOSEPH CIRCUIT COURT
) SS:	
COUNTY OF ST. JOSEPH)	CAUSE NO. 71C01-1911-MI-000793
JUDICIAL WATCH, INC.,)	
Plaintiff,)	
)	
v.)	
)	
CITY OF SOUTH BEND,)	
Defendant.)	

PLAINTIFF JUDICIAL WATCH, INC.’S MOTION FOR SUMMARY JUDGMENT

Plaintiff Judicial Watch, Inc., by counsel and pursuant to T.R. 56, submits this motion for summary judgment. As grounds therefor, Plaintiff states as follows:

I. Introduction.

Due to the substantial public interest in records maintained by Defendant City of South Bend, Plaintiff sent two Access to Public Records Act requests. The City denied one request outright and substantially denied the other. Since transparency is the public policy of the State, and the City is improperly withholding the records, Plaintiff sued the City for access to the requested information. To date, the City has failed to provide a legitimate reason for withholding the information. Nor can it. None of the statutory exceptions – let alone the exceptions asserted by the City – apply to the withheld information. The Court, therefore, should grant Plaintiff’s motion for summary judgment and order the City to produce all withheld records within 14 days.

II. The Requested Records.

This case concerns certain audio recordings and the subsequent documentation

of those recordings. On February 4, 2011, Karen DePaepe, the communications director for the South Bend Police Department, discovered recordings of South Bend Police Captain Brian Young's telephone line. Officer's Report, attached as *See Exhibit A*. According to news reports, it is believed that the recordings contain conversations among officers making "racist comments and discuss[ing] activities that were possibly illegal." Jeff Parrott, *Former South Bend employer says she told city lawyers years ago what's on police tapes*, South Bend Tribune (Dec. 20, 2019, available at https://www.southbendtribune.com/news/local/former-south-bend-employee-says-she-told-city-lawyers-years/article_2c1c79a8-228c-11ea-9c2c-3f4013d3dbfa.html). Although the recording of Officer Young's telephone line continued after February 4, 2011, Plaintiff has not sought those recordings, and they, therefore, are not at issue in this case. In addition, on January 4, 2012, Ms. DePaepe prepared a report for South Bend Police Chief Daryl Boykins. *See Exhibit A*. Based on a redacted copy of the report, Ms. DePaepe summarized some of the recorded conversations as well as prepared written descriptions of all conversations. *Id.* It also appears the recordings have been preserved on cassette tapes. *Id.*

After learning about the recorded conversations, the South Bend Common Council issued a subpoena to the South Bend City Administration seeking the production of these tapes. Order on South Bend Common Council's Motion to Dismiss Interpleaders' Complaint, Cause No. 71D07-1209-MI-00159 (Jan. 29, 2018) at 2. On September 14, 2012, the Council initiated a lawsuit in this Court seeking to enforce the subpoena. *Id.* While the case sorted itself out, the parties stipulated to several

terms. Stipulated and Agreed Standstill Order, Cause No. 71D07-1209-MI-00159

(Sept. 18, 2017). The terms included:

1. The above-captioned action involves a request by the Council to enforce a subpoena for certain recordings and cassette tapes captured and created by the South Bend Police Department. The materials requested by the Council's subpoena may be subject to use and disclosure restrictions under the Federal Wiretap Act, the Indiana Wiretap Act, or other federal or state law.

2. This Stipulated and Agreed Standstill Order shall apply to all materials containing or referring to the contents of the record of Brian Young's assigned telephone line at the Police Department at any time[.]

5. [T]he Confidential Information shall not be used, disclosed, or communicated to any person or entity in any fashion or for any purpose whatsoever until such time as a court of competent jurisdiction has entered a final, non-appealable ruling regarding the legal status of the Confidential Information[.]

Id. at 1-2. The Court approved the stipulated agreement on September 18, 2017. *Id.* at 3.

On April 22, 2019, the Court issued its first summary judgment order in that case. *See* Order on Intervenors' Motion for Summary Judgment, Cause No. 71D07-1209-MI-00159 (Apr. 22, 2019). In it, Judge Hostetler decided whether the Indiana Wiretap Act prohibited the production of the tapes. *See Id.* at 1. He concluded it did not. *See Id.* at 11. The recordings made on or before February 4, 2011 "do not fall under the protection of the Indiana Wiretap Act. Thus, the production of those Recordings would not violate the Act as a matter of law." *Id.* Similarly, on February 5, 2020, the Court ruled on the second motion for summary judgment. *See* Order on Intervenors' Second Motion for Summary Declaratory Judgment, Cause No. 71D07-1209-MI-00159 (Feb. 3, 2020). In his opinion, Judge Hostetler ruled that the

recordings made on or before February 4, 2011 “are not covered by the Federal Wiretap Act, and therefore, as a matter of law, the Act does not prohibit production or publication of such Recordings.” *Id.* at 16.

III. Plaintiff’s APRA Requests.

On November 1, 2019, Judicial Watch submitted an APRA request to the City seeking “All audio tapes secretly recorded on the telephone line of a South Bend Police Department detective that were subsequently discovered by former Communications Director Karen DePaepe in January 2011 and that became the subject of Litigation by Common Council.” *See* Exhibit B. By letter dated November 5, 2019, the City denied Plaintiff’s request for the tapes invoking the Stipulated and Agreed Standstill Order in *South Bend Common Council v. South Bend City Administration*, Cause No. 71D07-1209-MI-00159 as well as I.C. § 5-14-3-4(a)(1), (2), (3), and (8). *See* Exhibit C.

On November 13, 2019, Judicial Watch submitted a second APRA request. This request sought “An Officer’s Report filed on January 4, 2012 by SBPD Office Karen DePaepe detailing the contents of audio tapes Ms. DePaepe heard, which reportedly contain racist remarks by certain SBPD police officials.” *See* Exhibit D. By letter dated November 18, 2019, the City informed Plaintiff it was producing the officer’s report, albeit in redacted form. *See* Exhibit E. According to the letter, the redacted information is being withheld pursuant to a Stipulated and Agreed Standstill Order in *South Bend Common Council v. South Bend City Administration*, Cause No. 71D07-1209-MI-00159, as well as I.C. § 5-14-3-4(a)(1), (2), (3), and (8). *See Id.*

In the officer’s report, Ms. DePaepe wrote, “Enclosed are cassette recordings

and written descriptions of the audio recordings previously discussed that you requested.” *See* Exhibit A. The City, however, did not produce the enclosed written descriptions. *See Id.* Nor did it inform Plaintiff that it was withholding the written descriptions in their entirety. *See* Exhibit E.¹

IV. Argument.

A. Standard of review.

The first section of the APRA states:

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state 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. Providing persons with the 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. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.

I.C. § 5-14-3-1. By enacting APRA, the legislature “declared [] transparency in government is the public policy of the State of Indiana.” *Groth v. Pence*, 67 N.E.3d 1104, 1108 (Ind. Ct. App. 2017). Therefore, APRA violations are reviewed *de novo*. *See Id.* at 1112. No deference is given to the government agency, and the initial burden of proof is on the agency. *See Id.* The agency “meets its burden of proof by showing that the undisclosed records fall within an exception listed under I.C. § 5-

¹ To be clear, Plaintiff only seeks the tapes containing the recordings made on or before February 4, 2011. Plaintiff also only seeks the portions of the officer’s report and the written descriptions concerning the recordings made on or before February 4, 2011.

14-3-4 and by establishing the content of those records with adequate specificity beyond merely relying on a conclusory statement or affidavit.” *Id.* In addition, the exceptions are to be narrowly construed. *See Indianapolis Newspapers v. Indiana State Lottery Commission*, 739 N.E.2d 144, 154 (Ind. Ct. App. 2000).

B. The exceptions.

To be withheld from disclosure, the requested records must fall within an exception listed under I.C. § 5-14-3-4. *See Groth*, 67 N.E.3d at 1112. With respect to the records requested by Plaintiff, the City asserts exceptions 1, 2, 3, and 8. Exception 1 applies to records “declared confidential by state statute.” I.C. § 5-14-3-4(a)(1). Exception 2 applies to records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Exception 3 applies to records “required to be kept confidential by federal law.” I.C. § 5-14-3-4(a)(3). Exception 8 applies to records “declared confidential by or under rules adopted by the supreme court of Indiana.” I.C. § 5-14-3-4(a)(8). As discussed below, none of these exceptions apply to the tapes and the officer’s report at issue in this case.

C. The tapes and officer’s report have not been declared confidential by state statute.

Without explanation, the City is withholding the tapes and officer’s report pursuant to Exception 1, which allows government agencies to withhold records that are declared confidential by state statute. To date, the City has not identified which state statute it believes prevents disclosure. As stated above, on April 22, 2019, well before Plaintiff submitted its APRA requests, Judge Hostetler ruled that the tapes

sought are not covered by the Indiana Wiretap Act. *See* Order on Intervenors’ Motion for Summary Declaratory Judgment, Cause No. 71D07-1209-MI-00159 (Apr. 22, 2019). Based on that ruling, the City’s assertion of Exception 1 for the tapes is unfounded. If the Indiana Wiretap Act does not apply to the tapes, it obviously does not apply to the officer’s report or the written descriptions attached to it. The City therefore is improperly withholding records in whole and in part under Exception 1.

D. The tapes and officer’s report have not been declared confidential by rule.

To qualify under Exception 2, the City must identify: 1) the rule it adopted that prevents disclosure of the requested records; and 2) the statute that authorized the City to make such a determination. The City has failed the first prong of the requirements by not identifying any rule adopted by it that authorizes withholding the requested records. Further, the City has failed to state the statutory authority authorizing it to classify such records as confidential. Merely stating that such a rule exists is insufficient. *See Groth*, 67 N.E.3d at 1112. The City, therefore, is improperly withholding the requested tapes and the officer’s report under Exception 2.

E. The tapes and the officer’s report are not required to be kept confidential by federal law.

Similar to the Exception 1 assertion, the claim that the tapes and the officer’s report is protected by federal law has been resolved. As noted above, on February 3, 2020, Judge Hostetler ruled that the requested tapes are not covered by the Federal Wiretap Act. *See* Order on Intervenors’ Second Motion for Summary Declaratory Judgment, Cause No. 71D07-1209-MI-00159 (Feb. 3, 2020). Therefore, it is

reasonable to conclude that the Federal Wiretap Act also does not apply to the officer's report or the written descriptions attached to it. Without any assertion that another federal law allows for nondisclosure, the City's withholding of the records under Exception 3 is improper.

F. The tapes and the officer's report have not been declared confidential by or under rules adopted by the Supreme Court of Indiana.

Like the other exceptions, the City does not identify why it believes the Supreme Court has declared the tapes and the officer's report confidential. Nor has it identified which rule prohibits the disclosure of the tapes and the officer's report. Merely stating that such a prohibition exists is insufficient. *See Groth*, 67 N.E.3d at 1112.

Importantly, it is not entirely clear which, if any, rule prohibits disclosure. Of the three reported cases that invoke Exception 8, two concern the attorney-client privilege, one concerns court records, and the other concerns grand jury material. *See Board of Trustees of Public Employees' Retirement Fund v. Morley*, 580 N.E.2d 371 (Ind. Ct. App. 1991); *Groth*, 67 N.E.3d at 1118; and *Bailey v. Indiana Newspapers, Inc.*, 895 N.E.2d 321 (Ind. Ct. App. 2008). Clearly, the records at issue here do not concern information protected by the attorney-client privilege. Nor are the records court records. The City is improperly withholding the tapes and the officer's report under Exception 2.

G. The Stipulated and Agreed Standstill Order does not authorize the City to evade APRA.

The City also relies on the Standstill Order in Cause No. 71D07-1209-MI-

00159 to justify the withholding of the tapes and the officer's report. However, there is no exception under the law allowing for government agencies to stipulate to nondisclosure with a third party. If that were the case, government agencies could evade disclosing any record it wanted. The City's position is undoubtedly contrary to the state's public policy position of transparency.

It also does not matter that the Court approved the agreement. The Court did not act pursuant to a state or federal law, an agency rule, or even a rule of the Indiana Supreme Court. Importantly, the City has not even attempted to explain how the Standstill Order prohibits the City from producing complete copies of the tapes and the officer's report to Plaintiff.

V. Conclusion.

Therefore, for these reasons stated above, the Court should grant Plaintiff's motion for summary judgment and order the City to produce the tapes and the unredacted officer's report within 14 days, and for all other just and proper relief in the premises.

Respectfully submitted,

JONES LAW OFFICE LLC

/s/ Andrew B. Jones

Andrew B. Jones (29686-71)

Jones Law Office LLC

205 West Jefferson Boulevard, Suite 200

South Bend, IN 46601

574.239.7017

E: andrew@attorney-jones.com

CERTIFICATE OF SERVICE

I certify that on the 24th day of March, 2020, service of a true and complete copy of the foregoing document was made upon the Defendant's attorneys of record via electronic mail.

/s/ Andrew B. Jones
Andrew B. Jones

Copy

OFFICER'S REPORT

01/04/2012
(Date)

South Bend Police Department
(Name of Agency)

Page 01 of 02

Attention: Chief Darryl Boykins - Chief of Police

Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____

Reference: Recorded Audio Data from 574-245-6031 from 02/04/11 to 08/31/11

This Officer's Report is in regards to your request to provide you with recorded audio data that is housed and maintained by the South Bend Police Department as part of the normal course of operations. Per our previous discussions; on February 4, 2011 I was troubleshooting our Dynamic Instruments Recording System, which records all of our Police & Fire Radio Channels as well as the majority of telephone lines maintained by the South Bend Police Department. Our recording system had a DVD drive failure and we had lost some backup data. After a new drive was installed, I began to check the recording equipment to make sure it was operating correctly. As part of my trouble shooting, I listened to each Radio Channel, Workstation, or Telephone Line that we normally record as part of maintained documentation. When checking recordings for telephone line 574-245-6031, I heard a conversation between Captain Brian Young of the Investigative Division [REDACTED]

[REDACTED] At the time I was checking the recording device, I under the belief there may have been a problem with the recording system as my records listed this line as the Investigative Chief's telephone line and the conversation was clearly that of Captain Brian Young.

The recorded telephone line of 574-245-6031 had originally been Investigative Division Chief Rick Bishop's. Chief Bishop was aware his line was recorded but I do not know if he relayed this to his replacement, Chief Richmond. Chief Richmond kept his original telephone line of 574-235-7473 and had given line 574-245-6031 to Captain Brian Young, however I was not made aware of this. During my troubleshooting I thought the recording system was not recording the correct telephone line due to problems we had been having with the system prior to its' failure.

Initially when the recording system was set up; then Chief of Police Thomas Fautz had ordered that all incoming telephone lines answered by the Front Desk, Communications, the Chief of Police's telephone lines, all Division Chief's telephone lines, and the Internal Affairs telephone lines be recorded. The reasoning behind this decision was that should anyone receive telephone calls with information regarding any criminal cases or allegations of misconduct by officers we would have audio documentation of lead information or allegations.

Date: 01/04/2012

Time: 1600

Submitting Officer's Signature/ID #

OFFICER'S REPORT
SUPPLEMENTAL

11/04/2012
(Date)

Karen M. G. Jeps, Director PN 668
(Name/Rank / PNM)

Pg 02 of 02

When I heard the conversation on February 4, 2012 at 12:11:59 hours between Captain Brian Young [REDACTED]

[REDACTED]

In Captain Young's conversation on February 4th, he indicates that [REDACTED]

[REDACTED] Captain
Young [REDACTED]

[REDACTED]

[REDACTED]. It was at this point, I made a decision, as Keeper of the Records, to check further conversations to see if there was more information in regard to this incident.

In checking audio recordings on this same date, I discovered a [REDACTED]

[REDACTED]

[REDACTED] As I reviewed some of the audio, I [REDACTED]

[REDACTED] As you know, this information is housed and maintained by our department for a minimum of 3 years. Most of these audio recordings are maintained on the Dynamic Instruments Hard Drive and we do not have access to erase or edit the data stored on this hard drive.


Enclosed are cassette recordings and written descriptions of the audio recordings previously discussed that you had requested. Please feel free to contact me with any questions you have regarding this data.

Date: 01/04/12

Time: 1600

Submitting Officer's Signature/PN #

**PUBLIC RECORDS (APRA) REQUEST
 CITY OF SOUTH BEND**

Name of Requesting Party: William F. Marshall/Judicial Watch, Inc.			
Address: 425 Third Street, SW, Suite 800		City: Washington	State: DC
Zip: 20024		Telephone: 202-646-5170	Date of Request: 11/1/19
Time of Request: 2:30 PM		Submitted (check one): <input type="checkbox"/> In Person <input checked="" type="checkbox"/> Mail, Email or Facsimile	
Email of Requesting Party: bmarshall@judicialwatch.org		Signature of Requesting Party: 	
Name of Department having records, if known (i.e. Police, Building, Fire/EMS, Public Works): South Bend Police Department			
Records Requested. Please be specific. Use the back of form if additional space is needed.			
All audio tapes secretly recorded on the telephone line of a South Bend Police Department detective that were subsequently discovered by former Communications Director Karen DePaepe in January 2011 and that became the subject of (cont'd)			
Check one: I request to <input type="checkbox"/> INSPECT or <input checked="" type="checkbox"/> BUY copies of the records requested.			
Check one: I request to receive my records by <input type="checkbox"/> in-person pick-up; or <input type="checkbox"/> REGULAR MAIL; or <input checked="" type="checkbox"/> EMAIL; or <input type="checkbox"/> FAX			

*** SUBMIT REQUESTS TO THE LEGAL DEPARTMENT (apra@southbendin.gov) ***

CITY OF SOUTH BEND USE ONLY

Request Received By:	Department:	Date and Time Received:
Acknowledged Receipt: <input type="checkbox"/> Email <input type="checkbox"/> Telephone <input type="checkbox"/> In Person Acknowledgement Form		
Department Comments: <hr/> <hr/>		
ATTORNEY DECISION		
INFORMATION IS _____ DISCLOSABLE		INFORMATION IS NOT DISCLOSABLE _____
Attorney Comments and Instructions: _____ <hr/>		
Attorney Signature: _____		Date of Decision: _____
Letter sent (Date): _____	Decision Sent To: _____	Date: _____ By: _____
Informed requesting Party that information is _____ DISCRETIONARY DISCLOSURE or _____ NON-DISCLOSABLE		
Date: _____	Signature: _____	<input type="checkbox"/> In Person <input type="checkbox"/> By Telephone <input type="checkbox"/> By Email

SOUTH BEND APRA REQUEST CONTINUATION PAGE

Records requested (cont'd):

Litigation by Common Council.

1200 COUNTY-CITY BUILDING
227 W. JEFFERSON BOULEVARD
SOUTH BEND, INDIANA 46601-1830



Filed: 3/24/2020 2:32 PM
St. Joseph Circuit Court
St. Joseph County, Indiana
PHONE 574/235-8724
FAX 574/235-7670
TTY 574/235-5567

CITY OF SOUTH BEND PETE BUTTIGIEG, MAYOR

DEPARTMENT OF LAW

STEPHANIE STEELE
CORPORATION COUNSEL

ALADEAN M. DE ROSE
CITY ATTORNEY

November 5, 2019

William F. Marshall
Judicial Watch, Inc.
425 Third Street, SW, Suite 800
Washington, DC 20024
Via E-Mail – bmarshall@judicialwatch.org

Re: *Public Records Request AR19-2954*
Audio Tape Recordings

Dear Mr. Marshall:

Your public records request filed with this office on November 1, 2019 has been referred to me. In your request, you sought the following records: *“All audio tapes secretly recorded on the telephone line of a South Bend Police Department detective that were subsequently discovered by former Communications Director Karen DePaepe in January 2011 and that became the subject of Litigation by Common Council.”*

The records you have requested are subject to a Court Order entered on September 18, 2017 in an open case titled *South Bend Common Council v South Bend City Administration*, Cause No. 71D07-1209-MI-00159. That case involves subject matter common to your request. The Order applies to:

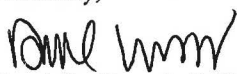
[A]ll materials containing or referring to the contents of the recording of Brian Young’s assigned telephone line at the Police Department at any time, including but not limited to digital recordings, cassette tapes, and any other materials and records capturing, documenting, reflecting, or referring to the contents of the recordings or cassette tapes (the “Confidential Information”).

This Order provides that such Confidential Information:

[S]hall not be used, disclosed, or communicated to any person or entity in any fashion or for any purpose whatsoever until such time as a court of competent jurisdiction has entered a final, non-appealable ruling regarding the legal status of the Confidential Information.

Therefore, in accordance with this pending litigation Court Order, and the Access to Public Records Act at Ind. Code §§ 5-14-3-4 (a) (1), (2), (3) and (8), I am denying your request.

Sincerely,



Danielle Campbell Weiss
Assistant City Attorney

ELLIOT A. ANDERSON
CLARA MCDANIELS

GEOVANNY MARTINEZ
THOMAS E. PANOWICZ

SANDRA KENNEDY
DANIELLE CAMPBELL WEISS

**PUBLIC RECORDS (APRA) REQUEST
 CITY OF SOUTH BEND**

Name of Requesting Party: William F. Marshall/Judicial Watch, Inc.			
Address: 425 Third Street, SW, Suite 800		City: Washington	State: DC
Zip: 20024		Telephone: 202-646-5170	Date of Request: 11/13/19
Time of Request: 2:30 PM		Submitted (check one): <input type="checkbox"/> In Person <input checked="" type="checkbox"/> Mail, Email or Facsimile	
Email of Requesting Party: bmarshall@judicialwatch.org		Signature of Requesting Party: 	
Name of Department having records, if known (i.e. Police, Building, Fire/EMS, Public Works): South Bend Police Department			
Records Requested. Please be specific. Use the back of form if additional space is needed. An Officer's Report filed on January 4, 2012 by SBPD Officer Karen DePaepe detailing the contents of audio tapes Ms. DePaepe heard, which reportedly contained racist remarks by certain SBPD police officials.			
Check one: I request to <input type="checkbox"/> INSPECT or <input checked="" type="checkbox"/> BUY copies of the records requested.			
Check one: I request to receive my records by <input type="checkbox"/> in-person pick-up; or <input type="checkbox"/> REGULAR MAIL; or <input checked="" type="checkbox"/> EMAIL; or <input type="checkbox"/> FAX			

*** SUBMIT REQUESTS TO THE LEGAL DEPARTMENT (apra@southbendin.gov) ***

CITY OF SOUTH BEND USE ONLY

Request Received By:	Department:	Date and Time Received:
Acknowledged Receipt: <input type="checkbox"/> Email <input type="checkbox"/> Telephone <input type="checkbox"/> In Person Acknowledgement Form		
Department Comments: <hr/> <hr/>		
ATTORNEY DECISION		
INFORMATION IS _____ DISCLOSABLE		INFORMATION IS NOT DISCLOSABLE _____
Attorney Comments and Instructions: _____ <hr/>		
Attorney Signature: _____		Date of Decision: _____
Letter sent (Date):	Decision Sent To:	Date: _____ By: _____
Informed requesting Party that information is _____ DISCRETIONARY DISCLOSURE or _____ NON-DISCLOSABLE		
Date:	Signature:	<input type="checkbox"/> In Person <input type="checkbox"/> By Telephone <input type="checkbox"/> By Email

1200 COUNTY-CITY BUILDING
227 W. JEFFERSON BOULEVARD
SOUTH BEND, INDIANA 46601-1830



Filed: 3/24/2020 2:32 PM
St. Joseph Circuit Court
St. Joseph County, Indiana
PHONE 574/235-5565
FAX 574/235-7670
TTY 574/235-5567

CITY OF SOUTH BEND PETE BUTTIGIEG, MAYOR

DEPARTMENT OF LAW

STEPHANIE STEELE
CORPORATION COUNSEL

ALADEAN M. DE ROSE
CITY ATTORNEY

November 18, 2019

William F. Marshall
Judicial Watch, Inc.
425 Third Street, SW, Suite 800
Washington, DC 20024
Via E-Mail - bmarshall@judicialwatch.org

Re: *Public Records Request AR19-3098*
Jan. 4, 2012 Officer's Report filed by Karen DePaepe

Dear Mr. Marshall:

Your public records request filed with this office on November 13, 2019 has been referred to me. In your request, you sought the following records: "*An Officer's Report filed on January 4, 2012 by SBPD Officer Karen DePaepe detailing the contents of audio tapes Ms. DePaepe heard, which reportedly contain racist remarks by certain SBPD police officials.*"

The record you have requested is subject to a Court Order entered on September 18, 2017 in an open case titled *South Bend Common Council v South Bend City Administration*, Cause No. 71D07-1209-MI-00159. That case involves subject matter common to the case of Karen DePaepe. The Order applies to:

[A]ll materials containing or referring to the contents of the recording of Brian Young's assigned telephone line at the Police Department at any time, including but not limited to digital recordings, cassette tapes, and any other materials and records capturing, documenting, reflecting, or referring to the contents of the recordings or cassette tapes (the "Confidential Information").

This Order provides that such Confidential Information

[S]hall not be used, disclosed, or communicated to any person or entity in any fashion or for any purpose whatsoever until such time as a court of competent jurisdiction has entered a final, non-appealable ruling regarding the legal status of the Confidential Information.

Therefore, in accordance with this Court Order, and the Access to Public Records Act at Ind. Code 5-14-3-4 (a) (1), (2), (3) and (8), the responsive record is being provided to you with redactions applied to all Confidential Information.

Sincerely,

Danielle Campbell Weiss
Assistant City Attorney

Encl.

ELLIOT A. ANDERSON
CLARA MCDANIELS

GEOVANNY MARTINEZ
THOMAS E. PANOWICZ

SANDRA KENNEDY
DANIELLE CAMPBELL WEISS

Copy

OFFICER'S REPORT

01/04/2012
(Date)

Karen M. L... aepe, Director of Communications 669
(Name/Rank / PN#)

Pg 01 of 02

Attention: Chief Darryl Boykins - Chief of Police

Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____
Initials/Date _____	Note _____

Reference: Recorded Audio Data from 574-245-6031 from 02/04/11 to 08/31/11

This Officer's Report is in regards to your request to provide you with recorded audio data that is housed and maintained by the South Bend Police Department as part of the normal course of operations. Per our previous discussions; on February 4, 2011 I was troubleshooting our Dynamic Instruments Recording System, which records all of our Police & Fire Radio Channels as well as the majority of telephone lines maintained by the South Bend Police Department. Our recording system had a DVD drive failure and we had lost some backup data. After a new drive was installed, I began to check the recording equipment to make sure it was operating correctly. As part of my trouble shooting, I listened to each Radio Channel, Workstation, or Telephone Line that we normally record as part of maintained documentation. When checking recordings for telephone line 574-245-6031, I heard a conversation between Captain Brian Young of the Investigative Division [REDACTED]

[REDACTED] At the time I was checking the recording device, I under the belief there may have been a problem with the recording system as my records listed this line as the Investigative Chief's telephone line and the conversation was clearly that of Captain Brian Young.

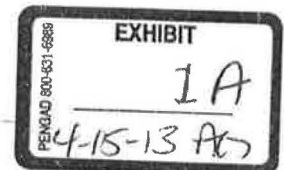
The recorded telephone line of 574-245-6031 had originally been Investigative Division Chief Rick Bishop's. Chief Bishop was aware his line was recorded but I do not know if he relayed this to his replacement, Chief Richmond. Chief Richmond kept his original telephone line of 574-235-7473 and had given line 574-245-6031 to Captain Brian Young, however I was not made aware of this. During my troubleshooting I thought the recording system was not recording the correct telephone line due to problems we had been having with the system prior to its' failure.

Initially when the recording system was set up; then Chief of Police Thomas Fautz had ordered that all incoming telephone lines answered by the Front Desk, Communications, the Chief of Police's telephone lines, all Division Chief's telephone lines, and the Internal Affairs telephone lines be recorded. The reasoning behind this decision was that should anyone receive telephone calls with information regarding any criminal cases or allegations of misconduct by officers we would have audio documentation of lead information or allegations.

Date: 01/04/2012

Time: 1600

Submitting Officer's Signature/PN #



OFFICER'S REPORT
SUPPLEMENTAL

01/04/2012
(Date)

Karen M. G. Jeps, Director PN 669
(Name/Rank / PN#)

Pg 02 of 02

When I heard the conversation on February 4, 2012 at 12:11:59 hours between Captain Brian Young [REDACTED]

[REDACTED]

In Captain Young's conversation on February 4th, he indicates that [REDACTED]

[REDACTED] Captain
Young [REDACTED]

[REDACTED]

[REDACTED]. It was at this point, I made a decision, as Keeper of the Records, to check further conversations to see if there was more information in regard to this incident.

In checking audio recordings on this same date, I discovered a [REDACTED]

[REDACTED]

[REDACTED] As I reviewed some of the audio, I [REDACTED] As you know, this information is housed and maintained by our department for a minimum of 3 years. Most of these audio recordings are maintained on the Dynamic Instruments Hard Drive and we do not have access to erase or edit the data stored on this hard drive.

Enclosed are cassette recordings and written descriptions of the audio recordings previously discussed that you had requested. Please feel free to contact me with any questions you have regarding this data.

Date: 01/04/12

Time: 1600

Submitting Officer's Signature/PN #