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IN THE  
COURT OF APPEALS OF INDIANA

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Jennifer L. Tutt,  
*Appellant-Plaintiff,*

v.

Evansville Police Department,  
*Appellee-Defendant*

February 20, 2023

Court of Appeals Case No.  
22A-MI-1723

Appeal from the  
Vanderburgh Superior Court

The Honorable  
Mary Margaret Lloyd, Judge

Trial Court Cause No.  
82D05-2103-MI-1063

**Opinion by Judge Vaidik**  
Judges Riley and Bailey concur.

**Vaidik, Judge.**

## Case Summary

- [1] Jennifer L. Tutt went to the Evansville Police Department (“the Department”) and asked to inspect an accident report for no fee. An employee directed her to a website that charges \$12 for an accident report. Tutt sued the Department, alleging that it violated the Indiana Access to Public Records Act (APRA), Indiana Code chapter 5-14-3, by not allowing her to inspect the accident report at the police department for no fee. The trial court entered summary judgment for the Department, and Tutt appeals.
- [2] Tutt renews her argument that she should be allowed to inspect the accident report at the police department for no fee. The Department acknowledges that the APRA does not allow a fee to inspect a public record, which includes an accident report. However, it asserts that Title 9 of the Indiana Code allows a fee to inspect an accident report and that these statutes control. Although Title 9 allows a fee to obtain an accident report, it does not authorize a fee to inspect the report. We therefore reverse.

## Facts and Procedural History

- [3] On February 23, 2021, Tutt went to the Department and asked to inspect the accident report in Case # 903734362. An employee told Tutt that in order to view the accident report, she had to go to the website “buycrash.com” and pay \$12. Tutt responded that she didn’t want a copy of the accident report; rather,

she only wanted to inspect it. The Department denied her request. Tutt then sued the Department, alleging it violated the APRA by making her pay a fee to inspect the accident report.

[4] Thereafter, the parties sought summary judgment. The Department designated an affidavit from the Deputy Controller for the City of Evansville about the buycrash.com website:

The City of Evansville, by and through its Board of Public Safety, has entered into a Memorandum of Understanding (the “MOU”) with LexisNexis Coplogic Solutions, Inc. (“LN Coplogic”) whereby the City receives a portion of the funds received through the buycrash.com portal for access to accident reports that originated from the Evansville Police Department. . . . The fees received from LN Coplogic pursuant to the MOU are credited to the “LEO [(law enforcement officer)] education fund” and used for such education purposes.

Appellant’s App. Vol. II p. 44. The Department also designated the MOU between the City of Evansville and LN Coplogic, which provides in part:

PURPOSE. Agency [(City of Evansville)] acknowledges that the Indiana State Police (ISP) is the central repository for crash reports in the State of Indiana pursuant to Ind. Code § 9-26-2-2. Pursuant to a separate agreement between LN Coplogic [and] ISP to which Agency is not a party (the “Agreement”), ISP has contracted with LN Coplogic to operate the Automated Report and Information Exchange System (ARIES) (“ARIES Reports”) to fulfill this purpose. The Agreement also provides for LN Coplogic to operate buycrash.com for the public to obtain accident reports prepared by a law enforcement agency pursuant to Ind. Code § 9-26-2-1 and submitted into ARIES. LN Coplogic shall provide ARIES Reports to legal entities and individuals

permitted to obtain a copy of ARIES Reports and/or specific data extracted from the ARIES Report in accordance with the Agreement and Ind. Code § 5-14-3 et seq. (“Authorized Requestors”).

SCOPE OF SERVICES. LN Coplogic shall not charge any fee to Agency for the services described herein. LN Coplogic shall charge no more than the amount permitted by ISP pursuant to Ind. Code § 9-26-9-3(c) for each ARIES Report (“ARIES Report Fee”) sold to an Authorized Requestor via LN Coplogic’s eCommerce web portal, BuyCrash.com (and its successor(s) the “LN Portal”). Of this ARIES Report Fee, LN Coplogic agrees to remit Eight Dollars (\$8.00) to Agency for each crash report submitted by Agency to ARIES and subsequently sold as an ARIES Report via the LN Portal (“Agency fee”).

*Id.* at 45. Following a hearing, the trial court entered summary judgment for the Department.

[5] Tutt now appeals.

## Discussion and Decision

[6] Tutt appeals the trial court’s entry of summary judgment for the Department. She contends the APRA does not authorize a fee to inspect an accident report. Statutory interpretation is a question of law, which we review de novo. *WTHR-TV v. Hamilton Se. Schs.*, 178 N.E.3d 1187, 1190 (Ind. 2022).

[7] According to the APRA, “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.” Ind. Code § 5-14-3-1; *see also Evansville Courier & Press v. Vanderburgh Cnty. Health Dep’t*, 17 N.E.3d 922, 928 (Ind. 2014) (explaining that the “APRA is intended to ensure Hoosiers have broad access to most government records”). To that end, “Any person may **inspect and copy** the public records of any public agency during the regular business hours of the agency,” subject to the exceptions listed in Indiana Code section 5-14-3-4. I.C. § 5-14-3-3(a) (emphasis added). The Department acknowledges that it is a public agency, that an accident report is a public record, and that no exception applies.

[8] Public agencies “may not deny or interfere with the exercise of the right” to inspect and copy and may not enter into a contract “for the storage or copying of public records” if the contract “unreasonably impairs the right of the public to inspect and copy the agency’s public records.” *Id.* at (b), (g). The APRA is liberally construed to implement this policy, with the burden for nondisclosure on the public agency denying access. I.C. § 5-14-3-1; *ESPN, Inc. v. Univ. of Notre Dame Police Dep’t*, 62 N.E.3d 1192, 1196 (Ind. 2016).

[9] The APRA requires public agencies to maintain records of crimes and accidents. Specifically, a public agency must “maintain a daily log or record that lists suspected or investigated crimes, accidents, or complaints.” I.C. § 5-14-3-5(c). For accidents in particular, the daily log or record must contain the following information:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.

(2) The time and nature of the agency’s response to all complaints or requests for assistance.

*Id.* “The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency” and must “be made available for inspection and copying in compliance with this chapter.” *Id.*<sup>1</sup>

[10] The APRA also discusses fees. “[A] public agency may not charge any fee **under this chapter . . . [t]o inspect**<sup>[2]</sup> a public record.” I.C. § 5-14-3-8(b)(1) (emphases added). However, “a public agency shall collect any certification, **copying**, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.” *Id.* at (f) (emphasis added).<sup>3</sup>

[11] Tutt argues that she should be allowed to inspect the accident report at the Department for no fee. The Department acknowledges that the APRA provides that there is no fee to inspect a public record, which includes an accident report. However, it asserts that Title 9 of the Indiana Code allows a fee to inspect an accident report and that these statutes control. When interpreting statutes,

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<sup>1</sup> Tutt does not dispute that the Department maintains a daily log. But as the Department’s attorney recognized at the summary-judgment hearing, the log does not contain all the information that an accident report is required to contain. *See* Tr. p. 7.

<sup>2</sup> “Inspect” includes the right to “manually transcribe and make notes, abstracts, or memoranda.” I.C. § 5-14-3-2(h).

<sup>3</sup> The parties do not discuss subsection (h), which “applies to the fee charged by a public agency for providing enhanced access to a public record.”

paramount consideration must be given to the basic principle that two statutes that apply to the same subject matter must be construed harmoniously if possible. *McCabe v. Comm’r, Ind. Dep’t of Ins.*, 949 N.E.2d 816, 820 (Ind. 2011). This rule trumps other rules of statutory construction. *Id.*

[12] Indiana Code chapter 9-26-2 addresses accident reports. Specifically, Indiana Code section 9-26-2-1 provides:

(a) A law enforcement officer shall investigate each motor vehicle accident that results in any of the following:

(1) The injury or death of a person.

(2) Total property damage to an apparent extent of at least two thousand five hundred dollars (\$2,500).

After investigating the accident, the law-enforcement officer must forward a written report to the Indiana State Police:

A law enforcement officer shall forward a written report of each accident investigated under section 1 of this chapter to the state police department within twenty-four (24) hours after completing the investigation. The report must contain, if possible, the following information:

(1) The name and address of the owner and operator of each vehicle involved in the accident.

(2) The license number and description of each vehicle involved in the accident.

(3) The time and place the accident occurred.

(4) The name and address of each person injured or killed in the accident.

(5) The name and address of each witness to the accident.

I.C. § 9-26-2-2. “A report filed by a law enforcement officer under section 2 of this chapter is not a confidential record and **shall be made available for inspection and copying under IC 5-14-3.**” I.C. § 9-26-2-3 (emphasis added).

[13] Indiana Code chapter 9-26-9 addresses fees for accident reports. Specifically, Indiana Code section 9-26-9-3<sup>4</sup> allows a fee of at least \$5 for “each report”:

(a) Except as provided in subsection (c), the main department, office, agency, or other person under whose supervision a law enforcement officer carries out the law enforcement officer’s duties may charge a fee that is fixed by ordinance of the fiscal body and is at least five dollars (\$5) for **each report**.

\* \* \* \* \*

(c) The superintendent of the state police department may charge a fee in an amount that is at least five dollars (\$5) for:

(1) **each report**; and

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<sup>4</sup> This section used to be located at Indiana Code section 9-29-11-1. In 2016, it was repealed and moved to its current location. *See* Public Law 198-2016, §§ 550, 584.



(2) the inspection and copying of other report related data maintained by the department.

(Emphases added). Subsection (b) details how those fees must be deposited:

(b) The fee collected under subsection (a) or (c) shall be deposited in the following manner:

(1) If the department supplying a copy of the accident report is the state police department, in a separate account known as the “accident report account”. The account may be expended at the discretion of the state police superintendent for a purpose reasonably related to the keeping of accident reports and records or the prevention of street and highway accidents.

(2) If the department supplying a copy of the accident report is the sheriff, county police, or county coroner, in a separate account known as the “accident report account”. The account may be expended at the discretion of the chief administrative officer of the entity that charged the fee for any purpose reasonably related to the keeping of accident reports and records or the prevention of street and highway accidents.

(3) If the department supplying a copy of the accident report is a city or town police department, in the local law enforcement continuing education fund established by IC 5-2-8-2.

I.C. § 9-26-9-3. Tutt asserts that subsections (a) and (c)(1) authorize a fee for obtaining an accident report but not for inspecting the report. The language of the statute supports this reading. As highlighted above, subsections (a) and

(c)(1) provide that a fee can be charged for “each report”; the subsections do **not** provide that a fee can be charged for “inspecting and copying each report.” Notably, subsection (c)(2) says just that; it provides that a fee can be charged for “the inspection and copying of other report related data maintained by the department.” If the legislature wanted to include a fee for the “inspection” of an accident report (as opposed to “other report related data”), it could have used the same language in (c)(1) that it used in (c)(2). It did not. When dealing with more than one statute on the same subject matter, we construe them harmoniously if possible. *McCabe*, 949 N.E.2d at 820. Doing so here, the fact that Section 5-14-3-8(f) provides that there is no fee to inspect a public record (which includes an accident report) under the APRA coupled with the fact that Section 9-26-9-3(a) and (c)(1) do not provide that the accident-report fee is for “inspection” lead us to conclude that there can be no fee to inspect an accident report.

[14] In arguing otherwise, the Department relies heavily on the Public Access Counselor’s advisory opinion in another case, 15-FC-213. We first note that we are not bound by the Public Access Counselor’s advisory opinions. *See Carroll Cnty. E911 v. Hasnie*, 148 N.E.3d 996, 1004 (Ind. Ct. App. 2020). In that case, the Public Access Counselor rejected the argument that a public agency may not charge a fee to inspect an accident report:

You have also indicated your belief that a public agency may not charge for inspection of records. Because the online accident report portal [(buycrash.com)] associates a fee for inspection and copying, you contend this runs contrary to the APRA. As I have

stated to you in the past, **the APRA itself contemplates such a statutorily authorized alternative fee schedule under Ind. Code § 5-14-3-8(f). In that manner, it supersedes the APRA and allows a charge for inspection and copying under Ind. Code § 9-29-11-1 [now Ind. Code § 9-26-9-3].** The statute does not distinguish between mere inspection and copying. Simply put, I interpret the intent of Ind. Code § 9-29-11-1 [now Ind. Code § 9-26-9-3] to include inspection. Subsection (c)(1)<sup>[5]</sup> does expressly address inspection (albeit addressing the state police) consistent with my interpretation of the intent of the statute as a whole.

Public Access Counselor, *Re: Formal Complaint 15-FC-213; Alleged Violation of the Access to Public Records Act by the City of Indianapolis* (Sept. 8, 2015),

<https://secure.in.gov/pac/files/advisory/15-FC-213.pdf> (emphasis added). In

short, the Public Access Counselor interpreted Section 9-26-9-3 to authorize a fee for inspecting an accident report because the APRA allows fees under Section 5-14-3-8(f). But as Tutt points out, Section 5-14-3-8(f) allows only certain fees (copying, certification, fax, and search)—**none** of which include fees for inspecting.

[15] We recognize that the Indiana State Police has entered into an agreement with LN Coplogic to operate the ARIES system and that citizens can conveniently purchase accidents reports for \$12 from buycrash.com. We also recognize that a portion of these fees are returned to the law-enforcement agencies that investigated the accidents and that such fees provide important funding to the

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<sup>5</sup> This appears to be a reference to (c)(2), not (c)(1).

agencies. But this arrangement and system do not change the fact that neither the APRA nor Title 9 authorizes a fee to inspect an accident report.

Accordingly, Tutt can go to the Department to view the accident report for no fee.<sup>6</sup>

[16] We therefore reverse the entry of summary judgment for the Department and remand the case for the trial court to enter summary judgment for Tutt.

[17] Reversed and remanded.

Riley, J., and Bailey, J., concur.

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<sup>6</sup> The Department cites other advisory opinions from the Public Access Counselor about whether police departments have access to accident reports. As noted above, these opinions are not binding on us. Moreover, the Department did not designate any evidence about whether it actually has access to accident reports. Instead, the Department argues that even assuming it has access to accident reports, it should not be required “to make special arrangements for Tutt to ‘inspect’ accident reports for free.” Appellee’s Br. p. 12. We rejected this argument above. As Tutt suggests, in order to comply, the Department “may have to print the accident report [and] show it to [her]” or show her “the accident report on a computer screen.” Appellant’s Reply Br. p. 7.