

## PUBLIC ACCESS TO WARRANTS AND MUG SHOTS

### GENERAL RULES

The Access to Public Records Act (“APRA”) (*I.C. § 5-14-3*) defines a public record as any record a public agency maintains; the definition specifically includes photographs. *See I.C. § 5-14-3-2(o)*.

Some public records may be confidential or disclosable at the discretion of the public agency. *See I.C. § 5-14-3-4*. All records which are not excepted from disclosure must be made available for public inspection and copying. *See I.C. § 5-14-3-3*.

An agency cannot declare records confidential absent statutory authority or rulemaking authority allowing the agency to classify records confidential. *See I.C. § 5-14-3-4(a)(2)*.

If an agency does not maintain records a person requests, the agency does not violate the APRA by not providing those records. (*Opinion of the Public Access Counselor 05-FC-255*).

### WARRANTS

An agency may not disclose records the Indiana Supreme Court declares confidential (through its Administrative Rules) unless a state or federal statute or a court order requires access to the records. *See I.C. § 5-14-3-4(a)(8)*.

Indiana Supreme Court Administrative Rule 9 declares arrest warrants and search warrants confidential *only if* an agency has yet to serve them **and** *only if* a trial judge has ordered them to be kept confidential. Ind. Admin. R. 9(G)(1)(b)(x), *cited in (Opinion of the Public Access Counselor 04-FC-36)*.

### MUG SHOTS

A law enforcement agency generally has the discretion to withhold investigatory records. *See I.C. § 5-14-3-4(b)(1)*. Investigatory records contain information compiled during the investigation of a crime. *See I.C. § 5-14-3-2(i)*.

A mug shot does not necessarily fall under the investigatory records exemption. Instead, an agency must present specific facts to prove the record falls under the exemption. *See I.C. § 5-14-3-9(f)-(g)*.

An agency cannot use the investigatory records exemption to arbitrarily deny release of a mug shot. *See I.C. § 5-14-3-9(g)(2)*. Therefore, an agency should establish a consistent policy regarding the release of mug shots.