

March 21, 2005

Mr. Donnie Slayton
Orange County Jail
205 E. Main Street
Paoli, IN 47454

Re: Formal Complaint 05-FC-38; Alleged Violation of the Access to Public Records Act by the Orange County Sheriff

Dear Mr. Slayton:

This is in response to your formal complaint alleging that the Orange County Sheriff (“Sheriff”) violated the Access to Public Records Act (“APRA”) by denying you access to records. I find that the Sheriff did not respond to your request for records in the manner required under the Access to Public Records Act.

BACKGROUND

On January 16, 2005, you submitted two separate requests for records to the Sheriff. In one request, you sought 25 categories of records pertaining to any and all policies, procedures, and local ordinances or guidelines for the Orange County Jail in reference to inmates and operations. The other request was for “any and all information relating to, but not necessarily limited to the following...” You then listed 14 categories of information or records relating to the food service at the jail.

You filed a formal complaint on February 17, alleging that you were denied records in violation of the APRA. I sent a copy of your complaint to the Sheriff. Major Richard Lott, Administrative Assistant to the Orange County Sheriff, responded. A copy of his letter is enclosed for your reference.

Mr. Lott states that the food service request went to the Jail Commander, who made Mr. Lott aware of it on January 21. The Sheriff received the other request on January 19. An initial response to both requests was hand-delivered and mailed to you on January 26, 2005. Mr. Lott sent you a second preliminary response on February 11. The February 11 response stated that

the Sheriff anticipated giving you a final response on February 21, 2005. On February 22, 2005, the Sheriff provided a partial response to 35 of the 39 areas of records you requested. The February 22 response promised a response to the four remaining records within 10 days. On March 7, the Sheriff sent you a response to the final group of four records.

In the February 22 letter, the Sheriff gave an itemized response to most of the items you requested. The responses may be grouped into categories. For the majority of your requests, you sought information that is contained in the Jail Rule Book, a copy of which you had received on July 12, 2004. The Sheriff had offered to replace your copy if you no longer had the book. The Sheriff stated that he did not maintain other records. The Sheriff excepted from disclosure records relating to Emergency Medical Transfer of Inmates, under “IC 5-14-3-4(b)” because “production of this document would compromise administrative or technical information that would jeopardize a record keeping or security system.”

Also included in the February 22 letter was the Sheriff’s response to the food service requests. You were denied several records because the Sheriff maintained that providing the record would require the Sheriff to compile a list or a digested record, compiled from other records, which the Sheriff maintains he is not required to do under the APRA. In other responses, the Sheriff stated that the request was for information rather than a record. Finally, some of the records were excepted from disclosure because “IC 5-14-3-4(b)” excepted administrative or technical information that would jeopardize a record keeping or security system. The records that were excepted from disclosure for the latter reason were:

- The accounts and funding appropriated for the inmate food budget from various governmental sources;
- All policies and procedures in reference to food preparation, handling, serving, dietary guidelines, including minimum daily requirements, and requirements concerning food temperature and storage prior to serving;
- The names and addresses of both dieticians and outside contact numbers of both;
- Work schedules for both dieticians for the month of January 2005;
- Proof of employee and inmate workers’ being screened for contagious diseases prior to employment and placement in the food services section of the jail.

The last record was also excepted under the personnel file exception, with citation to IC 5-14-3-4(b).

In his March 7 response, the Sheriff supplemented the February 22 response. With respect to Intake and Screening, the Sheriff excepted these records from disclosure on the same basis as for Emergency Medical Transfer of Inmates—administrative and technical information that would jeopardize a record keeping or security system. The other three categories of records were denied because the Sheriff did not maintain any records responsive to those requests.

You received the February 22 and March 7 responses after filing your complaint with my office. After receiving the March 7 response of the Sheriff, you wrote me to complain that the response proffered by the Sheriff was lacking in specificity because it contained only a reference to IC 5-14-3-4(b), and was the Sheriff’s “standard” response to your requests. You also take

issue with the use of the “administrative and technical information” exception as applied in the manner that the Sheriff has applied it.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency’s regular business hours, except as provided in section 4 of the APRA. Ind.Code 5-14-3-3(a). A public agency that receives a written request for a record via U.S. Mail, facsimile, or electronic mail is required to respond to the request in writing within seven (7) days of receipt of the request. IC 5-14-3-9(b), (c). Within the timeframe for response, the law envisions that the agency will issue a letter acknowledging receipt of the request and stating its intentions with respect to compliance with the Access to Public Records Act. The agency is not necessarily required to deny the record during the seven day timeframe, because the agency may not know whether it has responsive records or whether there is a basis for denying all or part of the record. Also, the agency may not be required to produce the record within the seven-day timeframe. Rather, the APRA does not specify when records must be produced. However, this office has stated that records should be produced within a reasonable time.

The Sheriff first responded to your dual requests for records on January 26, 2005. This was within seven days of its receipt of your requests, on January 19, 2005. There was no violation of the APRA with either the manner or time in which the Sheriff responded.

I also do not find a violation of the APRA with respect to the time in which the Sheriff supplied you with interim responses. Your request for records was fairly voluminous, comprising 39 discrete requests. The main response was delivered to you on February 22, about one month following your request. I do not find this response time unreasonable, under the circumstances.

Having received a substantive response, your complaint now centers on the adequacy of the exceptions noted, and whether the records excepted can be fairly characterized as “administrative or technical information that would jeopardize a record keeping or security system.”

The APRA imposes on a public agency certain formal requirements with respect to denying a record. If a request is made in writing, a public agency may deny the request if the denial is in writing, and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). Section 4(b) of APRA contains twenty (20) discrete discretionary exemptions from disclosure. The Sheriff did not include a citation to the specific exemptions authorizing the withholding of the records, because the citations in each case omitted the subsection of section 4(b) pertaining to the exemption for administrative or technical information [section 4(b)(10)], or for personnel records of public employees [section 4(b)(8)]. Therefore, the Sheriff violated the Access to Public Records Act because he did not cite the specific exemptions authorizing disclosure.

In much of his response, the Sheriff cites to the exemption for “administrative or technical information that would jeopardize a record keeping or security system.” IC 5-14-3-4(b)(10). Lacking in the response is any information that would allow me to determine whether the records you seek are part of a record keeping or security system, and whether disclosure of that information would jeopardize a record keeping or security system. Under IC 5-14-3-9(f), a public agency has the burden of proof to sustain its denial. In a court review of denial of a record under section 4(b), the public agency meets its burden by proving that the record falls within any one (1) of the categories of exempted records under section 4(b), and establishes the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit. IC 5-14-3-9(g)(1).

In *City of Elkhart v. Agenda: Open Government*, 683 N.E.2d 622 (1997) transfer den. 698 N.E.2d 1184 (Ind. 1998), the Indiana Court of Appeals reviewed a case in which the City had claimed Indiana Code section 5-14-3-4(b)(10) as authority for the nondisclosure of 1993 cellular telephone bills for the mayor and other City department heads. City officials denied Agenda: Open Government access because they believed that, with respect to an earlier public records request for similar information, the requestor had misused the E-911 system to discover the origin of the telephone numbers listed in the cellular telephone records.

The Court determined that the E-911 system did constitute a "record keeping or security system" under the APRA. The Court found that "[s]ection 4(b)(10) provides a discretionary exception for public records containing a 'type' of information due to its nature and not because a speculated 'use' of the information would jeopardize a record keeping or security system." The real question, therefore, according to the Court was whether the telephone numbers constituted "administrative" or "technical" information the disclosure of which would jeopardize that E-911 system. The Court determined that Indiana Code section 5-14-3-4(b)(10) provides an exemption for a type of information and not for the use of the information.

Applying the analysis supplied in the *City of Elkhart* case, the speculated use of the information is irrelevant in determining its disclosability under IC 5-14-3-4(b)(10). The question here is whether the information you seek is administrative or technical information, which if released would jeopardize a record keeping or security system. The record before me falls short of what the Sheriff would be required to show a court in a lawsuit to compel the agency to disclose the food service records and inmate intake and screening records. The Sheriff has failed to identify the record keeping or security system, or to describe how disclosure of the food service and intake policy records would jeopardize the record keeping or security system.

The Sheriff also denied records showing proof of employee and inmate workers' being screened for contagious diseases, citing the discretionary exception for personnel files of public employees. IC 5-14-3-4(b)(8). This exception provides that a public agency may deny personnel files of public employees, except for information specifically listed in the exception that must be disclosed. The information that you seek regarding screening for disease is not among the information that a public agency is required to disclose.

The exception for personnel files of public employees does not define what information may be included in a public employee's personnel file. If this information is not actually

maintained in each public employee's personnel file, it would not be subject to the exception merely because it concerns a public employee. Also, inmate food service workers who are not employed by the Sheriff are not "public employees" for purposes of the personnel file exception. Therefore, any information regarding an inmate food service worker who is not an employee of the Sheriff (or of another public agency) is subject to disclosure unless it is subject to a different exemption under the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the Orange County Sheriff violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Richard Lott