



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

June 10, 2010

Mr. Robert G. Pope  
116 E. 1st St.  
Auburn, IN 46706

*Re: Formal Complaint 10-FC-120; Alleged Violation of the Access to Public Records Act by the Auburn Police Department*

Dear Mr. Pope:

This advisory opinion is in response to your formal complaint alleging the Auburn Police Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

In your complaint, you allege that you requested information from the Department on April 12, 2010. My office forwarded a copy of your complaint to the Department. As of today, we have not received a response. However, I note that in the Department's letter denying your request for information, Chief Martin D. McCoy noted that your request was overly broad and said he was unclear about what you were requesting.

## ANALYSIS

Under the ARRA, a request for inspection or copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). While the term "reasonable particularity" is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21 and 00-FC-15* for two examples. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must "identify with reasonable particularity the record being requested." IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are

responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party's request.

*Opinion of the Public Access Counselor 04-FC-38* (2004), available at <http://www.in.gov/pac/advisory/files/04-FC-38.pdf>. In reviewing your request, it appears that you requested some information and some records. Some of the records that you requested with reasonable specificity include, for example, "The Supervisors [sic] Use of Force report," "any disciplinary actions as a result of the OPS investigations or reports that would have been forwarded to the Chief of Police regarding the above mentioned incidents," and "the factual basis for the suspensions that each officer has within the public record." Moreover, I note that the APRA specifically states that the latter type of information is to be made available upon request. *See* I.C. § 5-14-3-4(b)(8)(C). To the extent that the Department denied your request for access to these records without citing a basis for doing so under Section 4 of the APRA, it violated the APRA.

That said, it appears that other portions of your request seek *general information* rather than *records*. The Department is not obligated to create records in response to a request, and it is also not obligated to answer generalized inquiries. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA."

## CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated the APRA by failing to either provide you with the records you specifically requested or, alternatively, by failing to cite to a provision in the APRA that permits the Department to withhold the records. The Department did not violate the APRA by denying your requests for "information" that was not contained within the Department's records.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Chief Martin D. McCoy