



# STATE OF INDIANA

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December 22, 2010

Ms. Robin L. Canfield  
7427 S. Salt Creek Ct.  
Bloomington, IN 47401

*Re: Formal Complaint 10-FC-293; Alleged Violation of the Access to Public Records Act by the Monroe County Sheriff's Office*

Dear Ms. Canfield:

This advisory opinion is in response to your formal complaint alleging the Monroe County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Sheriff's response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on October 21, 2010, you asked the Sheriff via email "where would I find public records on all parking violations for Windfree Estates." You claim the Sheriff did not respond. On October 26th, you requested more information regarding parking violations. Again, you claim the Sheriff did not respond. On November 19th, you requested the procedure for obtaining public records regarding parking violations. Once again, you claim that the Sheriff did not respond.

In response, the Sheriff states that an employee of the office did respond to you on October 19th. In that response, the employee informed you that you were welcome to contact him via telephone. He provided you with a telephone number and his office hours. He also informed you that the information you requested had been forwarded to the Monroe County Highway/Traffic Commission, and advised you to make contact with that entity. Further, on November 19th, the Sheriff responded to you via letter and acknowledged your request for records. On November 22nd, the Sheriff informed you that it does not maintain any records responsive to your request. The Sheriff referred you to the Monroe County Circuit Sheriff. The Sheriff also outlined the procedures for requesting records from the Sheriff's office.

## ANALYSIS

Under the APRA, a request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Here, it is not clear that you requested *records* in your initial communications to the Sheriff. Rather, it appears that you were seeking *information*. The APRA requires that a request for records identify with reasonable particularity the *records* requested. See I.C. § 5-14-3-3(a). In any event, the Sheriff's office responded to you initially on October 19th and invited you to make contact with the office via telephone. The response from the Sheriff also informed you that the relevant information was forwarded to another agency, which the Sheriff also communicated to you in its November 22nd letter confirming that the Sheriff has no responsive records. 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." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy...."). The Sheriff did not violate the APRA by failing to release records that it does not have.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Sheriff did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Sheriff James L. Kennedy