



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

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](http://www.IN.gov/pac)

August 25, 2011

Mr. Brandon M. Beltz  
DOC # 124180  
5124 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 11-FC-210; Alleged Violation of the Access to Public Records Act by the Wells County Sheriff's Department*

Dear Mr. Beltz:

This advisory opinion is in response to your formal complaint alleging the Wells County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Elaine A. Stoppenhagen, Records Clerk, responded on behalf of the Department. Her response is enclosed for your reference. I have granted your request for priority status pursuant to 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that on July 13, 2011 you submitted a written request to the Department for a copy of a police report from March 17, 2010 regarding a woman found unconscious in the parking lot of a hotel. You believed the woman to be Kimberly Beltz or Kimberly Moyster. You also requested records relating to the dispatch to the scene of the incident, any records of incarceration, intake records, medical records, incident reports, grievance, release records, audio/visual records, and any other documents relating to Kimberly Beltz or Kimberly Moyster. In response to your complaint, the Department advised that it had no records responsive to your request.

In response to your formal complaint, Ms. Stoppenhagen advised in the initial search of records responsive to your request, she was unable to find any records for a Kimberly Beltz or Kimberly Moyster. After receiving your formal complaint, she again searched the Department's records and found information for a Kimberly Moystner, who the Department identified as the person whose records you were attempting to locate. The Department has since provided to you all records responsive to your request. The Department has stated that it does not have an incident report for Kimberly Moystner and that the Bluffton Police Department would be the appropriate public agency to request the record. In regards to the medical records that have been requested, your request has

been forwarded to the company contracted to respond to medical situations at the jail, who intends to respond to you accordingly.

## ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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, the Department responded to your request within the seven-day time period required by the APRA.

Generally, 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....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*.

In your request to the Department, you requested records for a Kimberly Beltz or Kimberly Moyster. The Department did not have records responsive to either of those requests. Upon performing an additional search of its records when it received your formal complaint, the Department was able to determine that Kimberly Moystner was the appropriate person you were searching for. The Department has since provided you all records responsive to your request and has informed you of the correct agency to request the incident report and the status of any medical records that may be released. As such, it is my opinion that the Department did not violate the APRA.

## CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage  
Public Access Counselor

cc: Elaine A. Stoppenhagen