



# STATE OF INDIANA

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October 27, 2011

Jason Tye Myers  
DOC # 154417  
5124 Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 11-FC-258; Alleged Violation of the Access to Public Records Act by the Clinton County Sheriff's Department*

Dear Mr. Myers:

This advisory opinion is in response to your formal complaint alleging the Clinton County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A. Howard Williams, Legal Deputy, responded to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on May 26, 2011, you submitted a written request to the Department for any police reports made by the detective's during an investigation that ultimately lead to your arrest and conviction in the Tippecanoe County Court. The Department responded to your request in writing and provided you with a cover sheet to a November 3, 2003 case report. You maintain that the cover sheet to the November 3, 2003 case report was not a record responsive to your request.

You submitted a second request to the Department, to which it responded in writing on June 9, 2011. The Department advised that you received the cover sheet to the November 3, 2003 case report because the particular case was ongoing and that no other information about that case could be released at this time. The Department further stated that it did not take a stolen vehicle report involving your automobile.

You responded to the Department on July 1, 2011 and advised that the statute of limitations for burglary is five (5) years; as such the investigation could not still be open. You again made another request for any detective reports regarding conversations about your car being onsite at the property that had been allegedly burglarized. The Department responded to your July 1, 2011 correspondence and advised that it was looking into the matter. On July 8, 2011, A. Howard Williams, the Department's Legal

Deputy, acknowledged the receipt of your letter addressed to the Department and that your request was being treated as one made pursuant to the APRA. Mr. Williams provided that a detailed response would follow. As of October 3, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have received no further correspondence from the Department.

In response to your formal complaint, Mr. Williams advised that his office is recently been inundated with APRA requests from a variety of different sources. Mr. Williams further provided that all records responsive to your request have now been disclosed by the Department at no charge.

### 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." *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* 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. *See* 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 initial request within the seven (7) day time-frame as required by the APRA.

The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is "information compiled in the course of the investigation of a crime." *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. "Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1)." *Id.*

Not all information compiled by a law enforcement agency, however, is subject to the investigatory records exception. For example, I.C. §§ 5-14-3-5(a) and (c) of the APRA set forth the information about arrests and suspected crimes, accidents or complaints that must be provided upon request and for which a law enforcement agency may not claim the investigatory records exception. Also, it is clear from the definition of investigatory record that not all investigations are subject to this exception. Law enforcement agencies may conduct investigations, such as internal investigations concerning the violation of a departmental rule, for example, that are not crimes and therefore not subject to the exception under I.C. § 5-14-3-4(b)(1). *See Opinion of the Public Access Counselor 03-FC-75*. Thus, to the extent that the Department failed comply with the requirements of I.C. § 5-14-3-5 in response to your initial request by only providing a cover sheet of a case report, it violated the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See I.C. § 5-14-3-7(a)*. However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See I.C. § 5-14-3-7(c)*.

Under the circumstances provided, it is my opinion that the Department violated the APRA by failing to respond to your request within a reasonable period of time. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. As of the date you filed your formal complaint, seventy-three (73) days had elapsed since you last received any correspondence from the Department; who had indicated to you a detailed response to your request would be forthcoming. From the date of your original request on May 26, 2011, over four (4) months elapsed before all records responsive to your request were disclosed. Approximately seventeen (17) documents were ultimately disclosed in response to your request. Although an agency need not, and must not, cease or neglect its essential functions to comply with records requests and I sympathize with the increased demands made of the Department by the influx of public records requests, it is my opinion that it did not respond to your request in a reasonable amount of time. *See Opinion of the Public Access Counselor 11-FC-12*. However, as the Department has now provided all documents responsive to your request, I trust that its response is in satisfaction of your complaint.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated the APRA by failing to comply with the requirements of I.C. § 5-14-3-5 and not responding to your request within a reasonable period of time.

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" following.

Joseph B. Hoage  
Public Access Counselor

cc: A. Howard Williams