



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

January 3, 2012

Timothy J. Kopkey
DOC 153747
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 11-FC-303; Alleged Violation of the Access to Public Records Act by the Pulaski County Sheriff's Department

Dear Mr. Kopkey:

This advisory opinion is in response to your formal complaint alleging the Pulaski County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sheriff Michael Gayer responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department on November 10, 2011 for the complete criminal and disciplinary history of Frederick Rodgers, John Rodgers, and Robert Zimmerman. As of December 9, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive a response or any records from the Department.

In response to your formal complaint, Sheriff Gayer advised that you plead guilty on May 10, 2011 under Cause Number 25-C01-1001-FB-00003 in the Fulton County Circuit Court. The matter involved incidents that took place in Pulaski County, but the criminal proceeding was moved to Fulton County. You have filed your request as a Discovery Motion for production for information relating to the criminal and disciplinary history of the arresting officers involved in the criminal proceeding. As you seek information for a Discovery Motion in a matter to which you plead guilty, the Department has been advised by the Pulaski County Prosecutor that you do not have the right to obtain the information requested.

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).

The APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. See *Opinion of the Public Access Counselor 11-FC-314*. You submitted a request for records to the Department pursuant to Cause Numbers 66-C01-1104-PC-0001 and 66-C01-0407-FB-0003. After reviewing your request and the Department’s response, it is evident that the Department interpreted your request as one being made pursuant to the Rules of Discovery, not as one made pursuant to the APRA. I believe that the Department interpretation of your request being made pursuant to your criminal proceedings, not the APRA, was reasonable in light of the language and conflicting nature of your submission. As such, your request was made through means outside the scope of the APRA. See *Opinions of the Public Access Counselor 07-FC-314 and 08-FC-324*. If you continue to believe that the Department failed to respond to your discovery requests, you would need to file an appropriate motion with the Fulton County Circuit Court.

As noted in your prior formal complaints filed against the Department, the Department would be required to produce all records responsive to a properly submitted APRA request, minus the applicable statutory exceptions, *regardless* of whether you plead guilty in a separate criminal proceeding (emphasis added). However, it would appear that many of the records that you have sought would be considered personnel records, to which the Department, minus certain information that is required to be produced, would have discretion whether to disclose the information in response to an APRA request. See I.C. § 5-14-3-4(b)(8). As to a request made for the criminal history of an individual, Indiana law provides that limited criminal history information may not be released except under specific circumstances. See I.C. § 10-13-3-27. “Limited criminal history” is defined as information with respect to any arrest or criminal charge, which must include a disposition.” See I.C. § 10-13-3-11. Limited criminal history is subject-specific; in other words, a limited criminal history relates to a particular person about whom the information pertains. See *generally* I.C. § 10-13-3. Indiana Code § 10-13-3-31 provides:

Release of data to subject person; fee; challenge of data authorized Sec. 31. (a) Unless otherwise prohibited by law, a criminal justice agency that maintains criminal history data, upon request and proper identification of the person about whom criminal history data is maintained, shall provide that person with a copy of the person's criminal history data for a reasonable fee. (b) Any person may challenge the information contained in the person's criminal history data file.



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If you can demonstrate to the Department that your request meets the criteria of the statute, the Department should provide access to the requested criminal histories. Here, even if your request was interpreted as being made pursuant to the APRA, it would have been rightfully denied as you failed to provide the requisite information. *See* I.C. § 10-13-3-27

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", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Sheriff Michael Gayer