



# STATE OF INDIANA

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December 16, 2011

Michael J. Shepard  
3500 N. Harlan Avenue  
Evansville, Indiana 47711

*Re: Formal Complaint 11-FC-305; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Sheriff's Department-Professional Standards Unit*

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Sheriff's Department – Professional Standards Unit (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Rhett Gonterman, Attorney, responded on behalf of the Department to your formal complaint. His response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(3).

## BACKGROUND

In your formal complaint, you allege you submitted a written request to the Department on November 1, 2011. On December 6, 2011, you received correspondence dated November 4, 2011 from Sgt. Noah Robinson, who requested that you further define your request as your original request was overly broad and not made with reasonable particularity. You further provide that your request was reasonably particular and the Department has unlawfully denied your request.

In response to your formal complaint, Mr. Gonterman advised that your request failed to identify with reasonable particularity the records being requested, as required by I.C. § 5-14-3-3(a)(1). It remains unclear from your request whether you are requesting the entire file for every previous record request that you have made, which would consist of thousands of pages, or only certain records related to your previous requests. The Department attempted to clarify your request in its original response to your request.

## 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, you made your original request on November 1, 2011. The Department’s written response to your request was dated November 4, 2011. You allege that you did not receive the response until December 6, 2011. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. See *Opinion of the Public Access Counselor 11-FC-80*. If you did not receive the Department’s response to your request until December 6, 2011, it is my opinion the Department acted contrary to section 9 of the APRA. However, if you received the Department’s response on or about November 4, 2011, it is my opinion the Department complied with all requirements of section 9.

The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” See *Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. See generally IC 5-14-3-1; *Opinion of the Public Access Counselor 02-FC-13*. Here the Department believed that your request was not made with reasonable particularity and attempted to clarify your request via written correspondence. I have nothing before me to indicate that you responded to the Department’s correspondence in an effort to alleviate the confusion or further clarify your request. As such, it is my opinion that the Department complied with the requirements of I.C. § 5-14-3-3(a)(1) and prior guidance offered by the Public Access Counselor’s Office in responding to a request made pursuant to the APRA that

was not reasonably particular. You should respond to the Department's correspondence in an effort to further clarify you previously submitted request.

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the Department did not respond to your November 1, 2011 request until December 6, 2011, it acted contrary to section 9 of the APRA. However, if the Department responded on November 4, 2011, it did not act contrary to the APRA. As to all other issues, 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 stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Rhett Gonterman