



# STATE OF INDIANA

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August 13, 2012

William C. Long  
501 South Walnut  
Plymouth, Indiana 46563

*Re: Formal Complaint 12-FC-215; Alleged Violation of the Access to Public Records Act by the Marshall County Sheriff's Department*

Dear Mr. Long:

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

## BACKGROUND

In your formal complaint, you provide that you originally received a copy of the record that was responsive to your request on February 11, 2002. However, you thereafter determined that you had misplaced the record. Thus, on July 11, 2012, you requested another copy of the record, to which you allege that the Department denied your request. You further allege that the Department's continually inquired with you as to what record you were seeking and became agitated when you were unable to provide a proper response. You provide that the reason for your request is that you were improperly denied your right to a telephone call when you were previously taken into custody.

In response to your formal complaint, Sheriff Chamberlin advised that the Department did receive your request in April 2012, to which an acknowledgement of your request was provided. The Department maintains that your request was not made with reasonable particularity, as required by APRA. Sheriff Chamberlin has directly spoken with you regarding your request and is still unable to determine what specific record that you are seeking. You have indicated that the document was from February 2002, but little further detail beyond this. Sheriff Chamberlin did inform you that if you wished to file a complaint against one of the Department's officers, you should contact the Indiana State Police to have an impartial agency conduct an investigation.

## 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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the Department has provided that it timely acknowledged the receipt of your request. As such, it is my opinion that the Department complied with the requirements of section 9 of the APRA in responding to your request.

As an initial matter, you provide in your formal complaint that you have previously been provided with a copy of the record that you are seeking. The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. See I.C. § 5-14-3-8(e). As such, if you have previously been provided a copy of the record by the Department, the Department would not have violated the APRA by failing to provide you with an additional copy. Regardless, the Department has indicated that it still desired to provide you with a copy of the record that you are seeking; however it was of the belief that your request lacked “reasonable particularity.”

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.” *Opinions of the Public Access Counselor 10-FC-57; 08-FC-176; 11-FC-239*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the

information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party's request. *Opinion of the Public Access Counselor 04-FC-38.*

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; Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88.*

As applicable here, Sheriff Chamberlin has provided that the Department has been unable to identify any records that were responsive to your request due to the request failed to properly identify the records being sought. You have provided that the documents are from February 2002; however the time of your incarceration, which is believed to be related to your request, occurred in September 2002. Sheriff Chamberlin has indicated that he has personally spoken with you regarding this issue and is still unable to accurately determine what records that you seek. Further, the Department has not denied your request due to its belief that it lacked reasonable particularity and any records that have been provided to you do not seem to satisfy your request. Based on the foregoing, it is my opinion that the Department did not violate the APRA in response to your request. I would encourage you to submit a request to the Department that properly identifies the records that you are sought. The Department has demonstrated its willingness to assist you in formulating your request; however you must provide the Department with a certain amount of identifying characteristics in order for it to comply with your request. If you desire to file a complaint against one of the Department's officers in regards to their prior conduct, Sheriff Chamberlin has advised that the Indiana State Police would be the proper agency to inquire with.

#### 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 stylized and cursive.

Joseph B. Hoage  
Public Access Counselor

cc: Sheriff Thomas G. Chamberlin