



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 10, 2013

Ms. Laura E. Landenwich, Esq.
C/O Clay, Daniel, Walton and Adams, LLC
462 South Fourth St. Medington Tower, Ste. 101
Louisville, KY 40202

Re: Formal Complaint 13-FC-258; Alleged Violation of the Access to Public Records Act by the Floyd County Sherriff's Department

Dear Ms. Landenwich:

This advisory opinion is in response to your formal complaint alleging the Floyd County Sherriff's Department ("Department") violated the Access to Public Records Act ("APRA") submitted on September 3, 2013. The Department responded by Mr. William English, Esq. His response is enclosed for your review. Your request does not meet the requirements of a priority status pursuant to 62 IAC 1-1-3, however, your complaint is being treated as such at the discretion of this Office.

BACKGROUND

In your formal complaint you provide that you submitted a written request for records to the Department on June 7, 2013 and June 25, 2013 involving the same records. Furthermore, you allege that the Department has failed to satisfy your request with reasonable timeliness.¹

In the request you asked for investigative records from the Department regarding the arrest of one of your clients. This was served on the Department on June 7, 2013 and June 25, 2013. On July 3, 2013, you received a call from the Department informing you that the records were in their custody and would be released. You received a partial response from the Department on July 10, 2013. You further requested full disclosure of the records that same day. The Department responded that a contracted private company held certain recordings that you requested and would need to be retrieved from the contractor. A status update was provided by the Department on July 31, 2013 and more records were released to you on August 10, 2013. Another status update was provided by

¹ Your complaint does allege that the request was made in anticipation of a potential lawsuit against the Department. As of the date of your request, a claim had not been initiated in any court of law. It is my determination that a proceeding that does not yet exist or has been scheduled does not rise to meet the priority complaint threshold under 62 IAC 1-1-3(3).

the Department on August 12, 2013. You then filed a formal complaint with this Office on September 3, 2013.

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 Agency’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. As applicable here, you allege that you served the Department on June 7, 2013 and June 25, 2013. The Department claims that a response was sent to you on June 9, 2013, however, that communication has not been provided. If this was not provided to you, this would be outside the seven (7) day window for a response and therefore a denial, however, you have not specifically raised this in your complaint. Partial satisfaction of your request has subsequently been provided to you and timeliness of the initial response is not at issue in this opinion.

Your complaint specifically alleges that the Department has failed to produce records pursuant to your request. It is undisputed that the Department has provided partial records. It is further acknowledged that your records request is relatively complex in regard to video recordings, lists of personnel, arrest records and the like. The Department has claimed that the gathering and acquisition of these records is an ongoing process. Prior opinions by former Public Access Counselors have stated that the release of records in a piecemeal fashion in response to a multifaceted request is appropriate and in compliance with the practicality provisions in the APRA. The current Office adopts that approach as well. Based on the documentation and narratives provided, it appears that the Department has released the records as they became available.

Furthermore, the Department has stated that they have compiled lists and data that are discretionary under 5-14-3-3(f). It is recognized that the Department does not have a dedicated individual charged with the sole responsibility of responding to records requests. Other duties and obligations exist within a local Sherriff’s department that serve the public. That being said, records requests shall be responded to with reasonable timeliness. The Department has provided periodic updates to you that comply with the

standards of reason implicit under the APRA. Judging by the relative complexity of the request, it may very well have taken a number of months to retrieve the information you have requested. While those efforts may be in good faith and reasonable, the Department is nonetheless encouraged to maintain practical haste when responding to records requests. This includes requesting records of a third-party contractor and insisting that they produce information quickly and thoroughly.

CONCLUSION

Based on the foregoing, it is my opinion that the Floyd County Sheriff's Department has not violated the APRA in failing to respond to your request, however, it is strongly encouraged that the Department continue to cooperate with you to satisfy your valid and legitimate request.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

cc: R. Jeffrey Lowe
William F. English