



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 2, 2013

Mr. McKinley Kelly #973030  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, IN 47838

*Re: Formal Complaint 13-FC-262; Alleged Violation of the Access to Public Records Act by the Lake County Sherriff's Department*

Dear Mr. Kelly,

This advisory opinion is in response to your formal complaint alleging the Lake County Sheriff's Department, ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Despite an invitation to do so by September 25, 2013, the Department has yet to respond. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 9, 2013.

## BACKGROUND

Your complaint alleges the Lake County Sherriff's Department violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

You allege that you contacted the Department on August 19, 2013. As of the date of your complaint received on September 9, 2013, you have not received a response from the Department. You have not provided a copy of your request to the Department for the specific records 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 Ind. Code § 5-14-3-1. The Lake County Sherriff's Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours

unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Absent a response to your formal complaint from the Department, it is presumed they effectively denied your request you sent on August 19, 2013. Because it is unclear as to whether the release of the records you seek is determined to be discretionary, I cannot accurately state if the denial was justified or if your request was served upon the correct public agency. If it was served upon the incorrect entity or if the records do not exist or the release is discretionary, then the denial is not a violation. Assuming the records are not subject to any discretionary or confidential exemption, then the Department violated your statutory right to obtain the records. The Public Access Counselor is not a finder of fact, so this Opinion can only state with speculation as to any violation.

#### CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Lake County Sheriff's Department has violated the APRA if the records you seek do not fall under any statutory exemption.

Regards,

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

Luke H. Britt  
Public Access Counselor

cc: John Buncich, Sheriff