



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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March 25, 2013

Mr. Keith W. Palmer
4910 Willow Road
Zionsville, Indiana 46077

Re: Formal Complaint 13-FC-60; Alleged Violation of the Access to Public Records Act by the Boone County Jail

Dear Mr. Palmer:

This advisory opinion is in response to your formal complaint alleging the Boone County Jail ("Jail") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your formal complaint, you provide that you previously submitted a written request for records to the Jail for records showing the Jail's admissions and releases for the time period of September 1-7, 2011. The records were provided by the Jail with no issues. You thereafter requested copies of the same records for the time period of September 1-7, 2010 and September 1-7, 2012. Upon receiving your subsequent request, the Jail informed you that you would have to go through your attorney to receive the requested information. You were then informed that Dennis Williams served as your attorney. The Jail refused to respond to your inquiry regarding why the attorney would need to be involved with your APRA request. You informed the Jail that the purpose of the request was unrelated to any pending legal matter and thus the attorney would have no authority as related to your APRA request. You thereafter made an additional identical request and again were informed that you would need to obtain the information from Mr. Williams.

Your formal complaint was filed with the Public Access Counselor's Office on February 21, 2013. On February 22, 2013, the Jail provided all records for the time period of September 1-7, 2010 and September 1-7, 2012 as had been 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 Jail 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 Jail’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 information regarding how or when the agency intends to comply.

The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. In this regard, information must be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. *Id.* I.C. § 5-14-3-5(a) provides that if a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person’s name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
 - (A) time and location of the arrest or the issuance of the summons;
 - (B) investigating or arresting officer (other than an undercover officer or agency); and
 - (C) investigating or arresting law enforcement agency.

If a person is received in a jail or lock-up, I.C. § 5-14-3-5(b) provides that the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person’s name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person is being held.
- (3) The time and date that the person was received and time and date of the person’s discharge or transfer.
- (4) The amount of the person’s bail or bond, if it has been fixed.



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Finally, I.C. § 5-14-3-5(c) obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The following information must be maintained in the daily log:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(b) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Here, the Jail provided all records related to admissions and releases for the time period of September 1-7, 2010 and September 1-7, 2012, seventeen days after your February 5, 2013 request and one day after your formal complaint was filed. It is my opinion that the Jail provided all records in response to your request in a reasonable period of time as required by section 3(b) of the APRA. Further, a person submitting a request for records is not required to be assisted by an attorney. 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). Here, it is my opinion that the Jail acted contrary to the APRA by providing that you would be required to go through your attorney in order to obtain records pursuant to the APRA. As all records responsive to the request that was the subject of this formal complaint have now been provided, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing, it is my opinion that the Jail provided all records responsive to your request in a reasonable period of time. Further, it is my opinion that the Jail acted contrary to the APRA by providing that you would be required to go through your attorney in order to obtain records pursuant to 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: Sheriff Ken Campbell