



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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April 18, 2013

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

Re: Formal Complaint 13-FC-96; Alleged Violation of the Access to Public Records Act by the Boone County Sheriff's Department

Dear Mr. Palmer:

This advisory opinion is in response to your formal complaint alleging the Boone County Sheriff's Department violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A. Howard Williams, Attorney, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Department on February 28, 2013. The Department acknowledged the receipt of your request on the date of its receipt. As of March 21, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any records responsive to your request. You provide that the Department is capable of providing the records that were sought, which is demonstrated by your previous requests that have been fulfilled.

In response to your formal complaint, Mr. Williams advised that the Department is committed to full compliance with the letter and spirit of the APRA. To that end, the Department engaged the vendor for the jail records to create a special reporting feature that would allow members of the public to check on individual booking activity. The information is available online, at no charge. Your request sought all booking activity of the Department from January 1, 2010 through December 31, 2012, which has generated over 6,000 names and 350 pages of printed material. The Department, as required under the APRA, has commenced reviewing and redacting all records responsive to your request. The work conducted by the Department to fulfill your request is in addition to the normal duties of the agency. The Sheriff has contacted the software vendor concerning the addition of a search feature that would address your request. The vendor has provided that a time range search would need to be restricted by a weekly range of dates as a broader search allocation would hinder the entire system. The addition of the

weekly search function will be added to the website upon completion by the vendor. In the interim, the Department will continue reviewing the records and make said records available on an incremental basis.

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 information regarding how or when the agency intends to comply. Here, the Department responded in writing to your written request on the date of its receipt. As such, it is my opinion that the Department complied with section 3(b) of the APRA in response to your request.

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:



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- (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.

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.

You specifically requested all admission and release records of the Department from January 1, 2010 and December 31, 2012. You have previously made identical requests of the Department concerning a more succinct time period, to which the Department has provided all records in response.

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, your request for records was submitted on February 28, 2013, to which the Department complied with the requirements of section 9(b) of the APRA by acknowledging the requests receipt on the day it was submitted. The Department has remained in contact with you throughout the pendency of the request, including personally meeting with you to address your concerns. The request that was submitted was quite broad and there is no dispute that the Department has records that are considered responsive. As you are seeking information that culminates in over 6,000 individuals detailed in over 350 pages of records, the Department is required to review and redact each record prior to disclosure. During the period of fulfilling your request, the Department must maintain the normal duties of its office, which include addressing other request for records that have been submitted. In addition to responding to your request, the Department has engaged the vendor to allow future requests be fulfilled by utilizing the Department's website, as opposed to requiring an APRA request to be submitted. Lastly, the Department has provided that it will be making periodic disclosures of the records responsive once the agency has reviewed and redacted the required information. In light of all of these factors, it is my opinion that the Department is currently in compliance with section 3(b) of the APRA in providing records responsive to your request in a reasonable period of time.



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CONCLUSION

Based on the foregoing, it is my opinion that the Department complied with the requirements of section 9(b) of the APRA in response to your request. Further, it is my opinion that the Department is currently in compliance with the requirements of section 3(b) of the APRA in providing all records responsive to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: A. Howard Williams