



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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June 13, 2016

Wabash Correctional Facility
Mr. John Study - #129153
Post Office Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 16-FC-100; Alleged Violation of the Access to Public Records Act by the Boone County Sheriff's Office; Sheriff Michael Nielsen

Dear Mr. Study:

This advisory opinion is in response to your formal complaint alleging the Boone County Sheriff's Office ("Office") and Sheriff Michael Nielsen violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Sheriff Nielsen. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 4, 2016.

BACKGROUND

Your complaint dated April 25, 2016, alleges the Boone County Sheriff's Office violated the Access to Public Records Act by failing to acknowledge your records request.

On March 21, 2016, you submitted a records request to Sheriff Nielsen seeking records in the Office's possession. As of the filing of this complaint, you had not received a response.

On May 25, 2016 the Office responded. The Office admits it failed to respond to your records request and states it is implementing new procedures to ensure public access requests are promptly processed and fulfilled. The Office also states the records you are seeking are possessed by the county prosecutor, but the records should be released shortly.

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 Indiana Code § 5-14-3-1*. The Boone County Sheriff’s Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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.

An administrative error at the Office meant your request was not opened until after your complaint was filed. The Office admits it failed to respond to your records request and has stated it will implement new procedures to ensure requests are acknowledged. A failure to respond, regardless of the accidental nature of the failure, still violates the APRA.

The Office has also indicated the records you requested will be released to you shortly. I hope the delay in processing did not cause an undue burden on you and that you obtain the records you are seeking.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Sheriff Michael Nielsen