



# STATE OF INDIANA

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August 15, 2011

Office of the Shelby County Sheriff  
Michael D. Bowlby  
107 West Taylor Street  
Shelbyville, Indiana 46176-2028

Re: *Informal Inquiry 11-INF-44; Office of the Shelby County Sheriff*

Dear Mr. Bowlby:

This is in response to your informal inquiry regarding the Office of the Shelby County Sheriff ("Sheriff"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Your inquiry seeks an opinion regarding whether an agency must comply when an Offender, as defined by the APRA, requests certain booking information as provided under I.C. §5-14-3-5.

The public policy of the APRA states, "[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. Accordingly, any person has the right to inspect and copy an 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).

The APRA defines "Offender" as "a person confined in a penal institution as the result of the conviction for a crime." *See* I.C. § 5-14-3-2(i). Those persons confined to a county jail awaiting trial would not qualify as an "Offender" pursuant to the APRA. The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. Specifically, the APRA 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 record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. 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;
- (C) the factual circumstances surrounding the incident; and
- (D) a general description of any injuries, property, or weapons involved.

The factual scenario at issue here is similar to that presented in *Opinion of the Public Access Counselor 11-FC-117*, where an offender located in the Westville Correctional Facility has requested booking records pursuant to I.C. § 5-14-3-5 of individuals who had been detained at the Tippecanoe County Jail. *See Opinion of the Public Access Counselor 11-FC-117*. The agency originally denied the request citing the personal safety of those individuals who had been detained at the jail, before eventually releasing the information. *Id.* My predecessor has opined and raised concern that there does not appear to be an obvious exception to the APRA that would permit the agency to withhold that information in light of the personal safety issues presented. *Id.* I wholeheartedly share your concerns on this issue along with my predecessor and plan to make the General Assembly aware of this issue during the upcoming Legislative session.

However, an agency retains discretion under I.C. § 5-14-3-4(23)(B) to deny a records request by an offender that concern or could affect the security of a jail or correctional facility. Thus, if any agency can show that releasing the personal information of booked individuals to an offender would somehow concern or could affect the security of a jail or correctional facility, the agency would be justified in withholding the records under subsection (23)(B). Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Thus in the future if you are of the belief and can demonstrate beyond merely citing to I.C. § 5-14-3-4(23)(B) that a release of information to an Offender under the factual scenario presented would concern or could affect the security of a jail or correctional facility, the APRA would provide your agency discretion in releasing that information.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,



Joseph B. Hoage  
Public Access Counselor