



STATE OF INDIANA

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December 16, 2013

Mr. Will Healey
Bloomington, IN
Via email

Re: Informal Inquiry 13-INF-62; Reasonable Particularity

Dear Mr. Healey:

This is in response to your informal inquiry regarding a request made to the Vanderburgh County Sheriff's Department ("Sheriff"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal 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.*

BACKGROUND

On or about November 5th, 2013, you served upon the Vanderburgh County Sheriff's Department a request for records seeking the following:

Booking data pertaining to methamphetamine-related arrests in Vanderburgh County between January 1, 2013 and November 1, 2013. Specifically, I would like to know the date of arrest, description of the offense, location of the offense, and name and date of birth of the perpetrator (if releasable).

Your request was denied because the Sheriff did not deem the request to be reasonably particular. Moreover, it was also denied because the Sheriff would have to create a list (and therefore, a new public record) to satisfy your request. Your inquiry challenges those assertions based upon the fact pattern you have submitted.

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 Vanderburgh County Sheriff's Department is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the

right to inspect and copy the Sheriff's public records during regular business hours unless the records are exempted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

Ind. Code § 5-14-3-2(o) defines public records as any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

The APRA requires that a request for records be made with reasonable particularity. Ind. Code § 5-14-3-3(a)(1). It is my opinion (and the opinion of former Public Access Counselors) that a request is reasonably particular if the records sought can be ascertained by the Agency as responsive to a request. In plain English, if an Agency can identify which records you want, then they should produce them if they exist. It should be noted, however, that even if the records exist, the search parameters of a request may not aid the agency in producing the records – this is when the request becomes not reasonably particular.

The facts you present are strikingly similar to those in *Jent v. Fort Wayne Police Dep't*, 973 N.E.2d 30 (2012). In evaluating a request the Department deemed not reasonably particular, the Court analyzed the “searchability” factor of the data. The opinion focused on the Department’s electronic resource capability to parse through the data to find records responsive to the request. Ultimately, the Department’s assertion that it could not locate the data through their usual means of searching was credible.

The Court in *Jent* wrote: “In response to a request under APRA, a public agency is required to search for, locate, and retrieve records. Depending upon the storage medium, the details provided by the person making the request may or may not enable the agency to locate the records sought.”

Ind. Code § 5-14-3-5(c) states an agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (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.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

The records you seek should be maintained by the Sheriff in the form of a log and should be disclosed. However, the law does not mandate how the information in the above-referenced log is maintained by an agency, how it is categorized, stored, or filtered. It may very well be the Sheriff does not have a simple database by which the records can be easily sorted and produced. If the log were in the form of a paper file, for example, then the search parameters of your request may be insufficient for them to identify the records responsive to your request. As you can infer, this holds difference agencies to different standards based upon their technological capabilities.

You contend a simple database search may yield the information you are searching for. While not an unreasonable assumption, I cannot say with absolute certainty the Sheriff has that particular search capability. It appears from the Sheriff's response they do not and therefore the Sheriff may be correct in its assertion the request is not reasonably particularly. That being said, in most circumstances, if feasible, an agency should seek clarification regarding a request by contacting the requestor for more specific information. It is my sincere hope the Sheriff will work with you in coming to a mutually satisfying resolution.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

cc: Sgt. Noah Robinson