



STATE OF INDIANA

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February 14, 2011

Mr. James T. Bagby
3038 W. 850 S.
Bunker Hill, IN 46913-9810

Re: Formal Complaint 11-FC-26; Alleged Violation of the Access to Public Records Act by the Howard County Sheriff's Department

Dear Mr. Bagby:

This advisory opinion is in response to your formal complaint alleging the Howard County Sheriff's Department ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. My office forwarded a copy of your complaint to the Sheriff, but we did not receive a response.

BACKGROUND

According to your complaint, you requested "incarceration records and [your] visit records" from the Sheriff on December 2, 2010. On December 13th, Lt. Robin Byers of the Sheriff's office sent you the incarceration records, but denied you access to the visit records, for which she informed you that you would need a court order. You renewed your request for the visit records on December 17th, and Lt. Byers sent you a similar response on December 22nd.

Although the Sheriff did not send this office a response to your complaint, I note that in the Sheriff's response to your records request, Lt. Byers stated that your request "for Attorney Visitation is not a matter of Public Record [sic] and you must have a Court Order to obtain those records." Lt. Byers did not explain why the records are nondisclosable.

ANALYSIS

The Sheriff's office responded to your request in a timely fashion and provided you with the incarceration records you requested. *See generally* I.C. § 5-14-3-9 (timeframes for responding to public records requests). However, the Sheriff denied your

request for visitation records. 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 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. I.C. § 5-14-3-9(c). Here, the name and title of the person responsible for the denial was included in the Sheriff's response, but the denial did not cite a statutory basis for withholding the visitation records. Consequently, the Sheriff's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Sheriff, it is unclear to me why your request was denied. The visitation records you requested may very well be confidential or otherwise nondisclosable. However, under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Sheriff has not provided a justification for withholding the records at issue here, it is my opinion that the Sheriff has failed to sustain its burden. If the Sheriff cannot justify withholding the records under the APRA, I encourage the Sheriff to release the records to you. To the extent the Sheriff persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Sheriff is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Sheriff should have cited to a statutory basis for denying you access to the visitation records as required by subsection 9(c) of the APRA. If the Sheriff cannot cite to a statutory basis for withholding the records, the Sheriff should release them to you. The Sheriff did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Lt. Robin Byers