



STATE OF INDIANA

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September 30, 2009

Harold T. Pritchard, II
6128 W. 100 S.
New Palestine, IN 46163

Re: Formal Complaint 09-FC-198; Alleged Violation of the Access to Public Records Act by the Marion County Jail

Dear Mr. Pritchard:

This advisory opinion is in response to your formal complaint alleging the Marion County Jail ("Jail") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, my opinion is that the Jail did not violate the APRA unless it has withheld paper copies of the records you requested.

BACKGROUND

According to your complaint, on August 20, 2009, you requested all incident reports on inmates who have been beaten or injured in the last six months while in protective custody. On August 21, 2009, the Jail responded to your request by claiming that records regarding former inmates were unavailable because the Jail's computer could not access them. You claim that all incident reports are available in paper files and argue that you should have access to the paper copies in lieu of the computerized versions.

Kevin Murray, Sheriff's Counsel, responded to your complaint on behalf of the Jail. Mr. Murray states that the Jail could provide reports for inmates who are currently in custody, but the Jail's computer system does not allow it to generate a report identifying former inmates that were in protective custody.

ANALYSIS

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." I.C. § 5-14-3-1. The Jail does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Jail during regular business hours unless the public records are exempt

from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The Jail contends that its computer system does not allow it to provide reports for inmates who are no longer in custody.¹ If the Jail does not have access to the records you requested, it has not violated the APRA by failing to produce them to you. The APRA governs access to the existing, maintained public records of a public agency; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.

You allege that the Jail retains paper copies of the records regarding former inmates. If that is true, those records would presumably be disclosable unless an exemption to the APRA applies. Under those circumstances, the Jail has not demonstrated that its denial of access to the records would be proper under the APRA. If the Jail does possess paper copies of the records you requested, I urge them to either produce them to you or cite a specific statutory exemption that authorizes the Jail to withhold them.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Jail does not have access to paper copies of the records, it did not violate the APRA by failing to produce records regarding former inmates because the Jail cannot access such records.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Kevin C. Murray, Marion County Sheriff

¹ A public agency is required to protect public records from loss, alteration, mutilation, or destruction. I.C. §5-14-3-7(a). Notwithstanding this provision, public records subject to I.C. §5-15 may be destroyed only in accordance with record retention schedules under I.C. §5-14-3-4(e). In other words, generally records must be protected and safeguarded by a public agency, and may be destroyed only when the schedule that applies to that record permits destruction. The determination of when a record may be destroyed is affected by the age of the record and statutory requirements applying to that specific type of record. I do not have sufficient information to determine whether or not the Jail destroyed the records or did so in accordance with an applicable record retention schedule.