



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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November 2, 2009

Mr. Thomas L. Melvin
104 9th Street
Crawfordsville, IN 47933

*Re: Formal Complaint 09-FC-225; Alleged Violation of the Access to
Public Records Act by the Montgomery County Sheriff*

Dear Mr. Melvin:

This advisory opinion is in response to your formal complaint alleging that the Montgomery County Sheriff (the "Sheriff") 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, it is my opinion that the Sheriff did not violate the APRA.

BACKGROUND

In your complaint, you allege that you requested copies of a 911 tape of your son, Thomas Grant Melvin, calling the Sheriff's office before he committed suicide on December 4, 2008. You state that "Paul" of the Sheriff's office told you that you needed to speak with a judge regarding the requested information. You apparently spoke with Judge David Ault of Montgomery County Superior Court, but Judge Ault told you that his office had nothing to do with the information you requested.

My office forwarded a copy of your complaint to the Sheriff. Chief Deputy Gary Truax's response on behalf of the Sheriff is enclosed for your review. Deputy Truax acknowledges that you contacted the Sheriff and spoke with Sgt. Paul Davis. According to Deputy Truax, Sgt. Davis advised you that any and all copies of 911 tapes are held by the Crawfordsville Police Department, which provides dispatching services for the Montgomery County Sheriff's Department. Deputy Truax further states that Sgt. Davis advised you that you would have to make a request to the Crawfordsville Police Department due to the fact that the Sheriff does not have any such record or any way to release such record from another department.

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.” I.C. § 5-14-3-1. The Town does not contest 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 Town 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 burden of proof for nondisclosure of a public record is on the public agency that would deny access to the record. I.C. § 5-14-3-1.

Here, the Sheriff asserts that it does not have access to the 911 tapes that you seek and has no way of obtaining the tapes from the Crawfordsville Police Department. While the APRA requires an agency to provide access to records it maintains unless and exception to disclosure is present (*See* I.C. § 5-14-3-3), nothing in the APRA requires an agency to produce records that are maintained by another agency. Further, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, it is my opinion the Sheriff has not violated the APRA by failing to disclose a record that it does not maintain and cannot access.

CONCLUSION

For the foregoing reasons, it is my opinion that the Sheriff did not violate the APRA because it does not maintain the records that you seek.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Chief Deputy Gary Truax, Montgomery County Sheriff's Office (*via facsimile*)