



# STATE OF INDIANA

**MITCHELL E. DANIELS, JR., Governor**

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January 13, 2011

Mr. Grover C. McPhaul  
1815 Nichol Ave.  
Anderson, IN 46016

*Re: Formal Complaint 11-FC-16; Alleged Violation of the Access to  
Public Records Act by the Madison County Sheriff's Department*

Dear Mr. McPhaul:

This advisory opinion is in response to your formal complaint alleging the Madison County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. The Department's response to your complaint is enclosed for your reference. I note that I have granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that on December 14, 2010, you orally requested public records from A. Howard Williams, the legal deputy for the Department. As of January 5, 2011, you had not yet received an acknowledgment. Your request sought access to "pink slips," adverse disciplinary actions regarding two individuals, audio/video recordings of a traffic stop that occurred on June 27, 2010, a "mobile data terminal conversation" between two officers from June 27th to 28th of 2010, and transcripts of mobile data terminal conversations from August 30th through August 31st of 2010.

My office forwarded a copy of your complaint to the Department. Mr. Williams responded on its behalf. He acknowledges that you orally requested records in December of last year. He notes that although he is the statutory legal deputy for the Department, he is neither an agent nor an employee of the Department. Nevertheless, he contacted the Department regarding your request on December 17th. He states that most of the records you requested do not exist, including the "pink slips," but that formal disciplinary information had already been forwarded to you in information that was already sent to you by Mr. Williams via certified mail. No audio/video of the traffic stop exists because the Department's vehicles were not equipped with it at the time of the relevant traffic stop, although Mr. Williams acknowledged that there could be radio traffic recorded in

the dispatch center. If any is located, the Department will forward it to you in a compact disc format. No mobile data terminal recordings or transcripts are created or maintained by the Department. Mr. Williams enclosed some information in the possession of the Department that references your name, which he enclosed with his response. He states that the Department attempted to send you all relevant records in its initial response, but you did not accept those records when they arrived via certified mail.

## 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. Any person has the right to inspect and copy the public records of a public agency 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 Department does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2.

Here, Mr. Williams notes that he is neither an agent nor an employee of the Department, notwithstanding the fact that he is the legal deputy for the Department. Generally, this office has held that requests sent to private residences and offices or other non-agency addresses are not valid requests. See *Opinion of the Public Access Counselor 08-FC-78*. In *Gregg*, the business address of a trustee was not the trustee’s home address; the trustee’s business address was a post office box. The requester was aware of the post office box address because he submitted requests for records in the past to that address and not to the trustee’s home. Nevertheless, the requester argued that the trustee should have to receive records requests at her home because she used part of her home as an office and performed some business functions there. Under those circumstances, Counselor Neal advised: “It is my opinion it is reasonable for the Trustee to direct official communications to the official address [i.e., the post office box] and telephone number of the township and away from her home address and telephone number.” *Id.* Similarly here, if Mr. Williams is neither an agent nor an employee of the Department, your request would be more appropriately directed to the Department’s official address.

In any event, it appears that Mr. Williams has now responded to your request with all responsive records. The Department need not produce records that do not exist or are not maintained by the Department. The public access counselor has repeatedly held that if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; 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.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). With respect to Mr. Williams’ statements regarding the

Department's previous response to you, I refer you to my previous opinion in response to your complaint in 10-FC-279.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Department has not violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: A. Howard Williams