



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR

JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 20, 2011

Mr. Greg D. Sobin  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 11-FC-262; Alleged Violation of the Access to Public Records Act by the Hendricks County Sheriff's Department*

Dear Mr. Sobin:

This advisory opinion is in response to your formal complaint alleging the Hendricks County Sheriff's ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John Haskin, Legal Deputy, responded on behalf of the Department. His response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you submitted a written request to the Department on September 13, 2011 for the case/incident report and any booking photos for Lebron Grimes, Case No. 09-0095207-0000. You further made a request for all incident reports and booking photos for Mary Butts. On September 15, 2011, the Department responded in writing to your request and cited I.C. § 5-14-3-4(b)(23) in denying your records request.

In response to your formal complaint, Mr. Haskin advised that the Department denied your request for the records pertaining to Mr. Grimes pursuant to I.C. § 5-14-3-4(b)(23)(B) in light of your status as an "offender" pursuant to the APRA. You are currently housed in the Wabash Valley Correctional Facility. Mr. Grimes, also an "offender" pursuant to the APRA, is currently incarcerated in the Marion County Jail. It is the Department's belief that producing the documents and booking photographs requested would affect the security of the Marion County Jail and/or the Wabash Correctional Facility. The information could be used to identify targets of harassment, intimidation, or injury. Further, the Department does not have any records responsive to your request for incident/case reports for Mr. Grimes.

In regards to the information concerning Ms. Butts, the Department cited I.C. § 5-14-3-4(b)(23)(A)(ii) in denying your request, as Ms. Butts was the victim of a crime.

Alternatively, the Department does not have in its possession of any records that were responsive to your request pertaining to Ms. Butts.

## 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* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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 a 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. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Department responded to your request within the timelines provided by the APRA.

The APRA provides a number of categories of records which may be disclosed by an agency at the agency’s discretion. A listing of such records may be found in I.C. § 5-14-3-4(b). One group of records which may be disclosed at the discretion of the agency, which the Department has cited, is the following:

- Records requested by an offender that:
    - (A) contain personal information relating to:
      - (i) a correctional officer (as defined in IC 5-10-10-1.5);
      - (ii) the victim of a crime; or
      - (iii) a family member of a correctional officer of the victim of a crime; or
    - (B) concern or could affect the security of a jail or correctional facility.
- I.C. § 5-14-3-4(b)(23).

The APRA defines “offender” as “a person confined in a penal institution as the result of the conviction for a crime.” *See* I.C. § 5-14-3-2(i). Because you are an offender currently housed at the Wabash Valley Correctional Facility, the Department may withhold from disclosure records that “concern or could affect the security of a jail or

correctional facility.” The Department has provided that Mr. Grimes is also an “offender” and is currently incarcerated in the Marion County Jail. The Department has advised that any records sought for Mr. Grimes that it has in its possession could be used to identify targets of harassment, intimidation, or injury if they were released and therefore affect the security of either the Marion County Jail or Wabash Valley Correctional Facility. As such, it is my opinion that the Department has met its burden and not violated the APRA in denying your request as to the records it has in its possession that were responsive to your request.

Generally, 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...”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. See *Opinion of the Public Access Counselor 10-FC-56*. The Department has provided that it did not have any records responsive to your request for case/incident reports for Mr. Grimes and for any of records sought for Ms. Butts. As such, it is my opinion that it did not violate the APRA in responding to your request.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage  
Public Access Counselor

cc: John Haskin