



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

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

March 17, 2011

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

*Re: Formal Complaint 11-FC-68; 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

I note that this complaint is substantially similar to that which you filed in 11-FC-16. In response to that complaint, I issued *Op. of the Public Access Counselor 11-FC-16*. The present complaint alleges that the Department still has not produced an audio recording of a traffic stop that the Department's attorney, A. Howard Williams, believed had already been sent to you. Mr. Williams states that he will mail you an additional copy of the recording along with other paper records related to that traffic stop.

## ANALYSIS

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). 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. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. §5-14-3-9(a). 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.

The APRA does not, however, prescribe timeframes for the actual *production* of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c).

It is unclear why you did not receive your requested records. In response to your complaint, Mr. Williams states that his understanding was that the Department had already forwarded the records to you. Mr. Williams also claims that it appears that he has now responded to your request with all responsive records, including a CD-ROM and other paper documentation related to your traffic stop. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Consequently, the Department's continued failure to produce this information would be contrary to the APRA. To the extent that an agency fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant's remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the Department has not provided you with a copy of the records as stated by Mr. Williams, the Department has acted contrary to the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: A. Howard Williams