



# STATE OF INDIANA

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February 2, 2012

Ronald Covington  
4490 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 12-FC-05; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Department*

Dear Mr. Covington:

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

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department for autopsy and crime scene photographs pertaining to Cause No. 49-G02-0206-MR-157363. The Department denied your request in writing on January 4, 2012, providing that the records you sought were investigatory and the Department was exercising its discretion pursuant to I.C. § 5-14-3-4(b)(1) to deny your request.

In response to your formal complaint, Mr. Murray advised that it denied your request pursuant to I.C. § 5-14-3-4(b)(2), which provides that it is within the discretion of the public agency to produce investigatory records of law enforcement agencies. Investigatory records include "information compiled during the course of the investigation of a crime." *See* I.C. § 5-14-3-2(h). Autopsy information and crime scene photos are investigatory records for the purposes of a criminal investigation. *See Althaus v. Evansville Courier Co.*, 615 N.E. 2d 441 (Ind. Ct. App. 1993). The investigatory records exception applies to all records compiled during the course of an investigation of a crime; even after the investigation has been completed. *See Opinion of the Public Access Counselor 11-FC-27*. As such, the Department properly exercised its discretion pursuant to I.C. § 5-14-3-4(b)(2) to deny your request.

## 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 section 9 of the APRA.

The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is “information compiled in the course of the investigation of a crime.” *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* Here, you requested autopsy and crime scene photographs compiled by the Department during a criminal investigation. Thus, the Department would have discretion to grant or deny your request pursuant to I.C. § 5-14-3-4(b)(1). I would also note that pursuant to I.C. § 5-14-3-4(a)(11), autopsy photographs are confidential except as provided under I.C. § 36-2-14-10. Therefore, it is my opinion that the Department did not violate the APRA by denying your request pursuant to I.C. § 5-14-3-4(b)(2).

## 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". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage  
Public Access Counselor

cc: Kevin Murray