



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 16, 2012

Ronald A. Tabb  
DOC 208619  
5501 South 1100 West  
Westsville, Indiana 46391

*Re: Formal Complaint 12-FC-152; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department*

Dear Mr. Tabb:

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

## BACKGROUND

In your formal complaint, you allege that on May 24, 2012 you submitted a written request for records to the Department. The records you requested from the Department concerned the personnel conduct history of certain employees. As of June 14, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege you have yet to receive a response from the Department.

In response to your formal complaint, Mr. Bushemi advised that the Department inadvertently failed to respond to your request for records within the timeframes contemplated by the APRA. On June 20, 2012, Mr. Bushemi responded to your request for records and advised that the Department was denying your request pursuant to I.C. § 5-14-3-4(b)(8). You were advised that there were no pending formal charges or any final disciplinary action taken against any of the employees that you cited.

## 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



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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 twenty-four 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 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 admitted that it inadvertently failed to respond to your request within seven (7) days of its receipt. As such, it is my opinion that the Department acted contrary to section 9 of the APRA in responding to your request.

As to the substance of your request, the APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA's disclosure requirements, except for:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion. The Department denied your request pursuant to (b)(8), to the extent that the records you sought were part of the



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employees personnel file and you did not seek certain information that is required to be provided under (b)(8)(A). The Department further advised that there have been no formal charges filed or final disciplinary action taken against any of the employees that were part of your request. As such, it is my opinion that the Department did not violate the APRA.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Department acted contrary to section 9 of the APRA by failing to respond to your request within seven (7) days of its receipt. As to all other issues, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: John P. Bushemi