



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
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July 18, 2012

Paul –A: Graber  
117 4B Road  
Nappanee, Indiana 46550

*Re: Formal Complaint 12-FC-182; Alleged Violation of the Access to Public Records Act by the Kosciusko County Sheriff's Department*

Dear Mr. Graber:

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

## BACKGROUND

In your formal complaint, you allege that the Department has failed to provide you with copies of certain records as to Investigator John David Ayers after a series of requests.

In response to your formal complaint, Sheriff Goshert advised that he spoke to you in early May 2012 regarding your request and advised that Mr. Ayers' oath was available to be picked up at his office. You indicated at that time you would come to Sheriff Goshert's office to pick up the copies. As of the date of Sheriff Goshert's response to your formal complaint, you have yet to pick up the copies.

## 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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. You have alleged that the Department has failed to provide you with any records that are responsive to your request. Sheriff Goshert has advised that you were informed that the records were and are available to be picked up at the Department and you advised the Department you would stop by and retrieve them. As such, if the Department informed you that the records were available for pick up, then it is my opinion that it did not violate the APRA. Regardless, as Sheriff Goshert has indicated the records are still available at his office, I trust that this is in satisfaction of your complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the Department informed you that the records you requested were available to be picked up, then it 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: Sheriff W.R. Goshert