



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
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August 17, 2012

Douglas Haley  
114 W. Main  
Winamac, Indiana 46996

*Re: Formal Complaint 12-FC-220; Alleged Violation of the Access to Public Records Act by the Starke County Sheriff's Department*

Dear Mr. Haley:

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

## BACKGROUND

In your formal complaint, you allege that on July 31, 2012, you called the Department and asked the Jail Commander when would be an appropriate time to inspect the jail log. The Jail Commander inquired as to your identity and the reason for your request. You were informed that the jail log was not a public record and you should talk to the Sheriff.

On August 1, 2012, you submitted a request in writing to the Sheriff detailing your request to inspect the jail log and thereafter left a voice mail for the Sheriff regarding the issue. As of August 13, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege you have yet to receive any response from the Sheriff or the Department. You provide that you continually have had issues accessing records of the Department and generally never receive a response or alternatively, you receive an improper denial.

In response to your formal complaint, Sheriff Cowen advised that he has never received a request from you for any records and that he would be glad to speak to you regarding any request that you might have.

## 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).

The Department maintains that it did not receive your request. As previous Public Access Counselor’s have provided, the Public Access Counselor is not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Department received your request. Under the APRA, if a 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). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). If the Department received your request and did not respond to it within these timeframes, the Department violated section 9 of the APRA. However, if the Department did not receive your request, it was not obligated to respond to it. Regardless, Sheriff Cowen has advised that he would be glad to speak with you regarding any requests that you would like to submit to the Department.

Just as a refresher for all parties, the APRA provides that no request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. *See* I.C. § 5-14-3-3(a)(2). Further, the APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. In this regard, information must be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. *Id.* I.C. § 5-14-3-5(a) provides that if a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person’s name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
  - (A) time and location of the arrest or the issuance of the summons;
  - (B) investigating or arresting officer (other than an undercover officer or agency); and



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(C) investigating or arresting law enforcement agency.

If a person is received in a jail or lock-up, I.C. § 5-14-3-5(b) provides that the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person is being held.
- (3) The time and date that the person was received and time and date of the person's discharge or transfer.
- (4) The amount of the person's bail or bond, if it has been fixed.

Finally, I.C. § 5-14-3-5(c) obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The record containing the information must be created not later than twenty-four hours after the incident has been reported to the agency, and the information must be made available for inspection and copying. *Id.* The following information must be maintained in the daily log:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
  - (A) the time, date, and location of occurrence;
  - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
  - (C) the factual circumstances surrounding the incident; and
  - (D) a general description of any injuries, property, or weapons involved.

Counselor Neal provided the following guidance regarding a law enforcement agency's requirements pursuant to I.C. § 5-14-3-5(c):

In some instances, a law enforcement agency will not maintain a separate record titled "daily log" but will instead use the daily incident reports to substitute for the daily log.

In that case, when the agency receives a request for the daily log information, the agency will generally provide copies of incident reports. In some cases, the agency will redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying. *Opinion of the Public Access Counselor 09-FC-93.*

The Department, as a law enforcement agency, would be required to comply with the requirements of I.C. § 5-14-3-5. If I can be of any further assistance to either party during the ensuing request for inspection or copying, please do not hesitate to contact me.

#### CONCLUSION

Based on the foregoing, it is my opinion that the Department did not violate the APRA if it never received your written request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Sheriff Oscar Cowen