



STATE OF INDIANA

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February 24, 2012

Mr. Michael R. Craig
3038 W-850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 12-FC-31; Alleged Violation of the Access to Public Records Act by the White County Sheriff's Office

Dear Mr. Craig:

This advisory opinion is in response to your formal complaint alleging the White County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sheriff Patrick Shafer responded to your formal complaint. I have enclosed a copy of the Sheriff's response for your reference.

BACKGROUND

In your formal complaint, you allege that you have submitted a written request to the Sheriff on January 18, 2012 for copies of interviews conducted by the Sheriff on October 3, 2006 and any photographs taken that day in regards to Case # 2006-10-01696. You further requested that the Sheriff waive the cost of any fees associated with your request, as you are an indigent prisoner. As of January 30, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Sheriff has not responded to your request in any fashion.

In response to your formal complaint, Sheriff Shafer advised that the Sheriff's Office does not maintain any records that were responsive to your request. The transcripts and recordings have been turned over to the White County Prosecutor's Office and any photographs that were sought were taken by a Carroll County Deputy.

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 Sheriff 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 Sheriff'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 Sheriff acted contrary to the APRA by failing to respond in writing to your written request within seven days of its receipt.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the Sheriff has provided that it no longer maintains or never maintained the records that you requested. As such, it is my opinion that it did not violate the APRA. As the Sheriff has provided the public agencies who he believes currently maintain the records that you sought, you may now make a public records request of those respective agencies.

Finally, I would note that the APRA permits a public agency to charge a fee for copies of public records. *See* I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. *See* IC 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*.

CONCLUSION

Based on the foregoing, it is my opinion that the Sheriff acted contrary to the APRA when it failed to respond to your written request within seven (7) days of its receipt. As to all other issues, it is my opinion that the Sheriff 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 "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Sheriff Patrick E. Shafer