



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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March 1, 2012

Mr. Scott D. Malott
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 12-FC-41; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Sheriff's Department

Dear Mr. Malott:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sheriff Tracy Brown 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 copies of any and all reports generated by the Department on March 9, 2009 concerning the shooting death of Heather Rush in Romney, Indiana. Your request included copies of any memoranda sent or received by the Department to any other law enforcement agencies as well as copies of any All-Points Bulletins sent or received concerning the victim and/or the suspect by any officer working, employed, or on-duty at the time. Sheriff Brown responded to your original request in writing on February 6, 2012. Sheriff Brown provided that the Department did not have any records under "Heather Rush" and the address you provided was in Montgomery County's jurisdiction. With your formal complaint, you submitted a copy of an Incident Report from Montgomery County where it alluded to the Tippecanoe Sheriff's Department having records and/or information that would be responsive to your request.

In response to your formal complaint, Sheriff Brown advised that the Department received your original request for records dated February 2, 2012. Your original request submitted to the Department was handwritten and not in the written form that you submitted with your formal complaint. In response to your request, the Department conducted an extensive search of its records for the name Heather Rush and the address you provided. After finding no records that were responsive to your request, the Department inquired with the Dispatch Center, where it was discovered that the address you provided was in Montgomery County. After conducting a further search of the

Department's Computer-Aided Dispatch and Records Maintenance Systems, the Department again failed to find any records that were responsive. As such, the Department responded to your original request in writing and advised you of its findings. After receiving your formal complaint from the Public Access Counselor's Office with further supplementary materials, the Department became aware of the existence of a 911 recording. The Department thereafter was able to locate an event log with the 911 recording, which have now both been provided to you.

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 timeframes provided in section 9(b) of the APRA.

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, after the Department received your original request, it conducted an extensive search for any records that were responsive. After completing the search, the Department responded to you in writing and provided that it had no records and noted that the address you provided was in Montgomery County. When you filed your formal complaint with the Public Access Counselor's Office with additional supplementary materials, the Department was made

aware of the Montgomery County Incident report that referenced the Tippecanoe Sheriff's Department. As a result of the additional information in your formal complaint, the Department was able to locate a 911 call and event log of the call. As the Department has now provided all records that were responsive to your request after you clarified the pertinent details of the request, it is my opinion that the Department did not violate the APRA. I trust that the records you received from the Department are in satisfaction of your request.

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 "H".

Joseph B. Hoage
Public Access Counselor

cc: Sheriff Tracy Brown