



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 29, 2014

Mr. Aaron Isby #892219  
Wabash Valley Correctional Facility  
6908 S. Old U.S. Highway 41  
Carlisle, IN 47838

*Re: Formal Complaint(s) 14-FC-229 and 14-FC-230 (Consolidated); Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana State Police and the Sullivan County Prosecutor's Office*

Dear Mr. Isby,

This consolidated advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") and the Sullivan County Prosecutor's Office violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* ISP has responded via Sgt. Brad Hoffeditz, Legal Counsel and the Sullivan County Prosecutor's Office has responded via Mr. Robert E. Hunley II, Sullivan County Prosecutor. Their response(s) are attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 2, 2014.

## **BACKGROUND**

On or about September 18, 2014, you submitted a public records request to the Indiana State Police seeking the following information:

[c]opies of information settling forth the guidelines, procedures, process and steps I must take in initiating criminal charges against prison staff who are rifling and throwing away my legal and personal mail! I urge you to cite all the criminal codes that makes this a crime in your response?

On or about September 18, 2014, you submitted a public records request to the Sullivan County Prosecutor's Office seeking the following information:

[c]opies of information setting forth the guidelines, procedures, process and steps I must take in initiating criminal charges against prison staff.

You did not receive a response from ISP or the Sullivan County Prosecutor's Office. In their response(s), ISP and the Sullivan County Prosecutor's Office argue that your request was not a public records request, but rather a question regarding procedures and policies and does not identify a particular document. The second question is merely a request for legal advice.

### **DISCUSSION**

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 Ind. Code § 5-14-3-1. The Indiana State Police and the Sullivan County Prosecutor's Office are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy ISP's and the Sullivan County Prosecutor's Office public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

While the lapse of seven days indicates a constructive denial, the ISP and the Sullivan County Prosecutor's Office has not denied you access because there exist no documents to deny. So the requirement that a denial has to be in writing and state the statutory exception for the denial does not apply. I disagree that your request is entirely comprised of questions – you do seek copies of something, however, you do not identify with reasonable particularity what items you seek. A public agency is not required to guess what is sought in order to satisfy a complaint. As to your request for legal citations, an agency is also not required to do legal research upon request pursuant to the APRA.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indiana State Police and the Sullivan County Prosecutor's Office has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Sgt. Brad Hoffeditz  
Mr. Robert E. Hunley II, Prosecutor