



# STATE OF INDIANA

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November 21, 2014

Mr. Jordan T. Vandenberg  
2579 Roxbury Road  
Evansville, IN 47714

*Re: Formal Complaint 14-FC-253; Alleged Violation of the Access to Public Records Act (APRA) by the Vanderburgh County Sheriff's Office*

Dear Mr. Vandenberg,

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Sheriff David Wedding's response is 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 22, 2014.

## BACKGROUND

Your complaint dated October 22, 2014 alleges the Sheriff violated the APRA by improperly denying you access to public records, specifically, copies of any and all "Off Duty Employment Request" forms submitted by deputies for the Sheriff's approval from January 1, 2010 to the present.

On September 17, 2014, you submitted the records request using the Sheriff's VCSO website records request portal, claiming access pursuant to APRA, Ind. Code § 5-14-3-1 *et. seq.* On September 18, 2014 the Sheriff, by letter, acknowledged your request as required under Ind. Code § 5-1-4-3-9. In the acknowledgement, the Sheriff indicated his office was in the process of gathering the information and the documents would be released within thirty (30) days.

On October 16, 2014, the Sheriff denied your request for the off duty employment forms of the department's deputies. The Sheriff claims your request was denied because such forms are filed in and a part of an employee's personnel file and thus may not be disclosed, with the exception of certain, basic, employment information pursuant to Ind. Code 5-14-3-4(a)(8). Further, the Sheriff claims the off duty employment forms contain sensitive information, specifically, the times and days of the week for which his deputies

provide security, that if released, could jeopardize the safety and security of both the businesses and the deputies.

In your formal complaint, you claim the Sheriff's denial of your request is capricious and suppresses information of great public interest. Your argument is threefold.

First, you claim it is in the public's interest to know how the Sheriff's deputies are using taxpayer funded training, equipment, uniforms, and transportation regardless if the deputy is working in an official capacity or off duty.

Second, you argue the off duty employment forms should be available for inspection because the deputies are permitted to use department-issued vehicles when carrying out off duty assignments. You support this claim by pointing to the fact taxpayers pay for the vehicles and the fuel.

Third, you claim the off duty employment forms are being improperly filed in employees' personnel files as a way to avoid public access under APRA.

On November 3, 2014, the Sheriff responded to your formal complaint. The Sheriff maintains the records you requested are not required to be disclosed pursuant to Ind. Code 5-14-3-4(b)(8) except for the certain limited exceptions contained in the statute. The Sheriff also reiterated concern for the safety and security of both the businesses and the deputies if such information is released.

### **ANALYSIS**

The public policy of the APRA states that "a (p)roviding person 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 Vanderburgh County Sheriff's Department is a public agency 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 the Sheriff's Department 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).

The issue in this case is whether the "off duty employment" forms used by and approved by the Sheriff for his deputies' off-duty employment are protected as confidential or otherwise exempt under APRA merely because these forms are filed in and a part of individual employee's personnel file. In this case, I believe the Sheriff has a legitimate argument that the forms are intended to be in a personnel file.

Weighing also the public interest in this matter, there may also be a way of providing you with the information you need while still preserving any personnel or sensitive information. Ind. Code § 5-14-3-6 allows an agency to separate confidential or discretionary material from disclosable records and release the partial record which may be produced. While the Sheriff is certainly justified in protecting his personnel and

investigatory law enforcement information, it stands to reason the public would be served by redacting the sensitive information and releasing the remainder.

**RECOMMENDATION**

Based on the foregoing, it is the Recommendation of the Public Access Counselor the Sheriff redact any discretionary material in the documentation and produce the rest.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt  
Public Access Counselor

Cc: Sheriff David Wedding