



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)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 19, 2016

Mr. Joseph Cigler
P.O. Box 463
Scherverville, IN 46375

Re: Formal Complaint 16-FC-138; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department

Dear Mr. Cigler:

This advisory opinion is in response to your formal complaint alleging the Lake County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Department has responded via Mr. John Bushemi, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 17, 2016.

BACKGROUND

Your complaint dated June 17, 2016, alleges the Lake County Sheriff's Department denied you access to public records when it failed to respond to your request. On or about May 24, 2016, you submitted a public records request to the Department for the following records:

Public records listing the Public Hazard Bonding Company for the Sheriff and all deputies employed at the Lake County Courthouse and all documents pertaining to the Sheriff Department's presence on your property, located at 305 East Joliet Street Scherverville, Indiana 46375 on the day of March 23, 2016.

You note in your complaint the information you are requesting is needed for an action you filed in District Court. On July 5, 2016 the Department responded. The Department states no state law requires bonding for the county sheriff and his deputies and therefore, no such records exist. They also state the additional reports you requested are excepted from disclosure under Indiana Code 5-14-3-4(b)(1) as investigatory records of a law enforcement agency.

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 Indiana Code § 5-14-3-1*. The Lake County Sheriff’s Department is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Department’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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.

A denial occurs seven (7) days after a written request goes unacknowledged by a public agency. LCSD failed to respond to your May 24, 2016 request within this time period, therefore resulting in a denial. A denial from a public agency must be in writing pursuant to Indiana Code § 5-14-3-9(d)(2) if the request was made in writing. It must state the exceptions to disclosure as justification for the denial, as well as the name of the decision-maker withholding the records. While this was eventually done, it was untimely under the circumstances.

Furthermore, the Department states the records it does maintain which are responsive to your request are investigatory in nature. Pursuant to Indiana Code § 5-14-3-4(b)(1), investigatory records of law enforcement agencies may be withheld at the discretion of the agency. As long as the release of the records would compromise an element of public safety, an expectation of privacy, or an ongoing investigation, such records should be withheld. To the extent any exist, you may seek any investigatory records introduced in court, however, from the court with jurisdiction over your criminal case.

Additionally, you explain in your complaint the records you seek are necessary to pending litigation between you and the Lake County Sheriff’s Department. When a case is pending before Indiana’s courts, it is the general policy of my Office to decline complaints. When a lawsuit has been filed concerning a specific subject matter, the General Assembly has precluded the Office of the Public Access Counselor from addressing the controversy from an APRA perspective. *See Indiana Code § 5-14-4-10(6)*. Indeed, the discovery process would be frustrated if an executive branch official were to preempt the court’s authority by issuing an opinion on production of documents. Discovery matters are exclusively within the purview of the judiciary and not this Office.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Bushemi, Esq.