



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

CHRIS HARKINS,

Complainant

v.

**DEARBORN COUNTY
COUNTY AUDITOR'S OFFICE
Respondent**

17-FC-03

ADVISORY OPINION February 24, 2017

This advisory opinion is in response to the formal complaint alleging Dearborn County Auditor's Office ("Auditor") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. The Auditor has responded on January 6, 2017 via Ms. Gayle Pennington, Auditor. Her response is enclosed for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 06, 2017.

BACKGROUND

The formal complaint filed on January 6, 2017 alleges the Dearborn Country Auditor's Office has violated the APRA by not complying with a records request.

On December 8, 2016, the Complainant submitted a request for the written report listing the annual statistical data and the extent and availability of services and programs to inmates identifying major events which have occurred in the jail and unfunded operational needs for the Dearborn County Jail. This information should have been compiled and submitted to the Auditor pursuant to Department of Correction Administrative Code 210 IAC 3-1-1. No response was received from the Respondent by the Complainant.



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The Respondents have responded to our office that due to the Respondents have now sent you documentation denying your request for the reason, "following public records shall be excepted from disclosure at the discretion of the public agency: Records requested by an offender that concern or could affect the security of a jail or correctional facility".

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 Dearborn County Auditor's Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the Auditor'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)*.

210 IAC 3-1-2(b) states:

Each sheriff shall prepare and submit...a written report setting forth the annual statistical data and the extent and availability of services and programs to inmates identifying major events that have occurred in the jail and unfunded operational needs...The report shall also be provided to the county auditor and be maintained as a public record.

At a minimum, the report shall include the following:

- (1) The total number of beds.
- (2) The total number of bookings with at least the top ten (10) identified by offense.
- (3) The average daily inmate population.
- (4) The total number of jail and in-custody deaths by type (suicide, natural causes, homicide) with a summary of each occurrence.
- (5) The number of escapes.
- (6) The total number of juveniles booked into the jail via waiver or direct file.
- (7) The availability of services provided at the jail.
- (8) A statement on the adequacy of jail staffing levels.
- (9) A statement on the maintenance and upkeep of the jail.
- (10) Unfunded needs and projects essential to jail operation and maintenance.
- (11) The average length of stay, for all inmates housed in the jail as of December 31, of the preceding year.



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The Auditor denied the release of this report pursuant to Indiana Code § 5-14-3-23(b), which states certain information may be withheld from an inmate if the record concerns jail safety and security information. It can reasonably be assumed portions of the report concern the safety of the jail, but I do not believe all of them would place the facility or its personnel at risk. Regardless, this Office is not the subject matter expert on jail security. However, neither is the Auditor's office. This record is unique in that while the Auditor's office is the recipient of the record and should retain it in a custodian-like manner as a public record, the Sheriff is the administrator of the jail and is in the best position to determine what would affect the county correctional facility as the originator of the document.

Indiana Code § 5-14-3-6 contemplates scenarios where parts of a record should be separated due to confidential or sensitive information. I do not believe a blanket denial is appropriate in this case for the entirety of the record. I recommend the Auditor work with the Sheriff to determine which elements are appropriate for inmate inspection and which are not.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Dearborn County Auditor should consult with the Sheriff's Department to ascertain which records are appropriate for release and which records could or would compromise jail security.

Luke H. Britt

A handwritten signature in black ink, appearing to read "LHB", written over a white background.

Public Access Counselor

Cc: Ms. Gayle Pennington