

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JACOB HARPER,  
*Complainant,*

v.

INDIANA DEPARTMENT OF CORRECTION,  
*Respondent.*

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Formal Complaint No.  
20-FC-174

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Correction violated the Access to Public Records Act.<sup>1</sup> The IDOC Legal Services office filed a response on behalf of the agency. In accordance with Indiana Code section 5-14-5-10, I issue the following

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

opinion to the formal complaint received by the Office of the Public Access Counselor on December 21, 2020.

### **BACKGROUND**

This case involves both a dispute over access to public records and whether the Indiana Department of Correction (IDOC) is a law enforcement agency for purposes of the Access to Public Records Act (APRA).

In August 2020, Jacob Harper (Complainant), a reporter for WFYI, submitted a public records request to IDOC for the following:

- a. A log of records requests sent to IDOC from Jan. 1, 2019 to present, including the requestor's name and organization, a description of the records requested, request date, whether the request was fulfilled, and if so, the date completed and any other information normally maintained by the agency.
- b. Death in custody forms and/or data completed by the IDOC from Jan. 1, 2018 to the date of completion of this request, including but not limited to the NPS-4, NPS-4A, NPS-5, NPS-5A, along with any state forms or reports completed following an offender death. If this data is also maintained in electronic spreadsheet form, please provide that, as well.
- c. All IDOC incident report data/critical incident report data from Jan 1, 2013 (or earliest possible date) to the date of the completion of this request

- d. All IDOC Restrictive status housing/segregation/confinement report data from Jan 1, 2013 (or earliest possible date) to the date of the completion of this request
- e. All IDOC Use of force report data from Jan 1, 2013 (or earliest possible date) to the date of the completion of this request.

IDOC denied Request (a.) because the agency claims the record does not exist. Harper cites an internal IDOC policy requiring the agency to keep such a log and uses specific kind of tracking number to do so. Seemingly, the public information officer has historically handled this type of request.

For the remainder of the request, Harper argues that IDOC is a law enforcement agency and should disclose the information in a similar manner as a police agency would in a daily log under APRA.<sup>2</sup> As support for his position, Harper cites an IDOC policy giving its officers the authority to arrest and investigate criminal matters.

IDOC based its denial of the entirety of the request on statutes this office has recognized before, notably Indiana Code section 11-8-5-2 and administrative code provision 210 IAC 1-6-2(2) and (3). IDOC has broad discretion to withhold a lot of information from the public for the safety and privacy of staff and inmates.

Due to a wholesale denial of this information, Harper filed a formal complaint with this office on December 16, 2020.

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<sup>2</sup> Ind. Code § 5-14-3-5.

For its part, IDOC argues that Harper's request for the agency's public records request log (i.e., item (a)) is not reasonably particular as required by APRA and requested Harper narrow down the request.

As for the remainder of Harper's request, IDOC contends it is not a law enforcement agency although there are certain employees within IDOC with law enforcement authority.

IDOC argues those employees do not make the agency a law enforcement agency for purposes of APRA. It maintains that, irrespective of the law enforcement agency question, the information would not have qualified as the information found in a daily log under Indiana Code section 5-14-3-5.

## ANALYSIS

### 1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

The Access to Public Records Act (APRA) says "(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." *Id.*

There is no dispute that the Indiana Department of Correction (IDOC) is a public agency for the purposes of the APRA; and thus, subject to the law's disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and

copy the IDOC's public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b).

## **2. Records request log**

The first item in dispute is Harper's request for IDOC's records request log.

This office is certainly familiar with the amount of records requests filed with IDOC. Approximately 50% of all standard mail correspondence we receive is from inmates at IDOC facilities. While they are also the pool from which the majority of this office's complaints are fielded. Because they often are deficient in form, function, or both, they are summarily dismissed. Nevertheless, we have an idea of the volume of requests for information and records that IDOC receives.

Still, there is certainly no expectation, either legally or policy-wise, that IDOC or any other agency develop a "request log." Some agencies might do so for tracking purposes but that is for internal administration and not a requirement.

If, however, an agency develops a log of records requests, it is a public record under APRA. IDOC maintains there is no aggregate document with this log, but rather requests are tracked on a facility-by-facility basis or by Central Office independently. This tracks with what we know about IDOC's public information process.

Even so, Harper's request is reasonably particular enough. It is clear what he is seeking. It matters not that Harper is not privy to how IDOC creates and maintains the documents. Harper described with reasonable detail what he is seeking.

Under APRA, a request for inspection or copying "must identify with reasonable particularity the record being requested." Ind. Code § 5-14-3-3(a)(1).

Although "reasonable particularity" is not statutorily defined, the Indiana Court of Appeals addressed the meaning of the phrase in two seminal cases. Applicable here, in *Jent v. Fort Wayne Police Dept.*<sup>3</sup>, which involved a dispute over daily incident report logs, the court concluded that reasonable particularity "turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records." 973 N.E.2d at 34.

Requiring reasonable particularity relieves a public agency from the guesswork of having to anticipate exactly what a requester is seeking.

If the agency can reasonably determine what the requester is asking for and proceeds with a search, then it is enough to meet APRA's standard.

The parameters suggested by this office are rooted in practicality and remain flexible. An agency should not apply them so strictly to render the process impossible.

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<sup>3</sup> 973 N.E.2d 30 (Ind. Ct. App. 2012).

A requester doesn't have a bowl a strike with a public records request, it just can't be all over the lane and in the gutter. Harper's request is close enough to a spare to be sufficient.

### **3. Inmate discipline, criminality and law enforcement agencies**

For the remainder of the request, there is, however, a legitimate argument that Harper's public records request is too broad to fulfill without narrowing. Nonetheless, this office is interested in exploring whether IDOC would be considered a law enforcement agency requiring them to develop and maintain a daily log.

As noted above, this office recognizes that IDOC has considerable deference when it comes to administering inmates and facilities. There is no question that the IDOC facility ecosystem is unique when it comes to regulating behavior, including inmate rehabilitation and management. To that extent, IDOC can invoke whichever statute it deems appropriate so long as it applies. Consider *Opinion of the Public Access Counselor, 20-FC-90 (2020)*.

But the question of whether IDOC is a law enforcement agency (LEA) for purposes of APRA is much more complex, regardless of whether a "daily log" they maintain is disclosable.

APRA defines "law enforcement agency" as:

an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police

department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.

Ind. Code § 5-14-3-2(q)(6). In construing this statute, the Indiana Supreme Court applied a two-part test to determine whether an agency is an LEA<sup>4</sup> for purposes of APRA.

First, is the agency “at any level of government?” In the case of IDOC, the answer is yes. As noted above, the Indiana Department of Correction qualifies as a public government agency.

Second, does the entity engage in investigation, apprehension, arrest, or prosecution of alleged criminal offenders? By IDOC’s own admission, the answer is again, yes, because some employees are authorized as law enforcement officers.

Strangely, IDOC invoked an inapplicable statutory definition to support its argument that it is not a LEA under APRA. IDOC cited Indiana Code section 35-47-15, which defines “law enforcement agency” as:

an agency or department of:  
(1) the state; or

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<sup>4</sup> *ESPN v. Notre Dame*, 62 N.E.3d 1192 (Ind. 2016).



(2) a political subdivision of the state;  
whose principal function is the apprehension of  
criminal offenders.

Ind. Code § 35-47-15-2. Although this statutory definition of “law enforcement agency” is narrower than APRA’s definition, it only governs retired law enforcement officers’ identification for carrying firearms. It does not concern access to public records.

IDOC also contends that it is not a law enforcement agency under APRA because not all employees are trained correctional police officers.

Neither of these arguments are well taken. The relevant statutory definition can be no other than the one directly germane to the case in question, which is Indiana Code section 5-14-3-2(q)(6). And if the test was whether the entirety of an agency must be trained as officers to qualify under that definition, any police department or sheriff’s office with civilians in its employ would be exempt. IDOC’s argument would lead to an absurd result.

IDOC qualifies as a statutory law enforcement agency. When they investigate criminal activity, they must develop a documentation of the investigation. It would be surprising if they did not already. The disclosability of that documentation is the more compelling argument – one IDOC did not burden itself to justify in full.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana Department of Correction should retrieve, gather, and produce the public records request logs requested by Harper. Insofar as the other material is concerned, it is likely that documentation akin to a daily log exists in some manner. Although Harper's request is seemingly too broad, if he chooses to narrow it, IDOC should not summarily dismiss the revised request as off-limits.



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Public Access Counselor