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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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LARRY W. WARREN,  
*Complainant,*

v.

MARION COUNTY SHERIFF'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
21-FC-66

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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 that the Marion County Sheriff's Office violated the Access to Public Records Act.<sup>1</sup> Attorney Kevin Charles Murray filed a response on behalf of the agency. In accordance with 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 June 8, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This case involves a dispute over access to 2012 visitor log in sheets for the facility known as Marion County Jail II.

On March 25, 2021, Larry Warren (Complainant) mailed a written records request to the Jail II facility<sup>2</sup> located at 730 E. Washington Street in Indianapolis, seeking log in sheets from when his trial attorneys visited him in November and December 2012. Warren noted in the request that there should be four visits total.

Warren filed a formal complaint with this office on June 8, 2021, alleging the MSCO violated the Access to Public Records Act (APRA) by failing to respond to his request for records.

On June 28, 2021, the MCSO filed an answer to Warren's complaint, denying the agency violated APRA.

First, the MCSO asserts that Warren failed to make a proper request under APRA because the agency never received his request. The MCSO contends that Warren mailed his request directly to CoreCivic,<sup>3</sup> which is the private company the MSCO contracts with to operate Jail II. The MSCO asserts that it has no record of receiving Warren's request.

Second, the MCSO argues that Warren is seeking records that likely no longer exist because the agency is no longer required to retain them. Specifically, the MCSO asserts that under the relevant retention schedule visitor log in sheets are categorized as routine incident reports and logs; and thus, may be destroyed after five years.

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<sup>2</sup> MCSO contracts with CoreCivic to operate Jail II.

<sup>3</sup> CoreCivic is formerly known as Correction Corporation of America.

Third, to the extent Warren's request is related to his pending litigation, the MCSO argues it is not required to produce the requested records in accordance with APRA.

Finally, the MCSO argues Warren's complaint lacks merit because it has discretion under APRA to deny a request for records by an offender that concern or could affect the security of a jail or correctional facility. The MCSO contends that Warren is an offender for purposes of APRA, and it is unclear why he is requesting visitor log in sheets. The agency speculates that Warren could be requesting the information to determine the MCSO's procedures to permit visitors to the jail and ways for visitors to smuggle contraband into the jail.

Notably, the MCSO contends that both it and CoreCivic searched for the records Warren requested and found nothing responsive.

## **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) 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." Ind. Code § 5-14-3-1. The Marion County Sheriff's Office (MCSO) is a public

agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy the MCSO's public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

## **2. Warren's complaint**

Warren argues that the MCSO violated APRA by failing to respond to the request he mailed to the Jail II facility, which is operated by CoreCivic. The MCSO argues, among other things, that it never received the request.

APRA applies to public agencies and public records. Usually, a public agency subject to the law is easy to spot. For instance, the Marion County Sheriff's Office is undoubtedly a public agency. By extension, based on APRA's definition, most—if not all—of the MCSO's records will qualify as a public records even if some are not disclosable.

From a requester's standpoint, it may not be as easy when a public agency contracts with a private entity to operate a government facility like a jail. In Indiana, the county sheriff has a statutory duty to take care of the county jail. Ind. Code § 36-2-13-5(a)(7).

All that to say, it is understandable why a person would send a public records request to the jail rather than the sheriff's office. Even so, under APRA, a requester must request public records from the public agency. Here, Warren mailed his request to the Jail II facility, which is operated by a private

company, rather than the MCSO. The MCSO contends that it did not receive the request. Based on the information provided, that is plausible. Going forward, Warren must request public records from a public agency to invoke the benefits of APRA.

Even if Warren properly submitted his request to the MCSO as required by APRA, he requested visitor log in sheets from 2012. The MCSO correctly points out that the relevant retention schedule does not require the agency to retain these records for more than five years.

This office considers the lack of the proper request and the likelihood that the requested records no longer exist based on the relevant retention schedule dispositive in this case; and thus, will not examine the MCSO's other two arguments.

### **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Marion County Sheriff's Office did not violate the Access to Public Records Act.



Luke H. Britt  
Public Access Counselor