



STATE OF INDIANA

MIKE BRAUN, Governor

**PUBLIC ACCESS COUNSELOR
JENNIFER RUBY**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Email: pac@opac.in.gov
Website: www.IN.gov/pac

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Re: Complaint 25-FC-264
Joseph Gerard (Complainant) v.
Whitley County Sheriff's Department (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed September 29, 2025.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on October 22, 2025, requesting a formal response by November 20, 2025. A formal response, submitted by Brendan Ruff of Carson LLP on behalf of Respondent, was received in this office on November 20, 2025.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide the requested records.

ANALYSIS

The public policy of 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.” Indiana Code (IC) 5-14-3-1. Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14-3-3(a).

Complainant filed an Access to Public Records Act (APRA) request on August 4, 2025 seeking Jail Bookings Logs for 2023-2024. On August 15, 2025 Complainant filed a second APRA request seeking a copy of Pretrial Detention Policies and Procedures. Complainant alleges that Respondent:

- 1) Failed to acknowledge receipt of either request,
- 2) Failed to produce records in a reasonable time frame,
- 3) Did not produce the records in the format requested, and
- 4) Failed to respond at all to the August 15, 2025 request.

A denial of disclosure by a public agency occurs if a person requests by mail or by facsimile a copy or copies of a public record, without written acknowledgement or denial, within seven (7) days from the date the public agency receives the request. IC 5-14-3-9(c).

Respondent failed to respond to either APRA request until August 28, 2025. This delay constitutes a constructive denial under the statute. Respondent acknowledges the “unfortunate delay” and cites an administrative oversight as the cause. A subsequent resubmittal of the APRA request on August 28, 2025, led to an immediate acknowledgement by Respondent. Further, Respondent stated, “Upon identifying the error, [Respondent] promptly took corrective action....”

Respondent, on November 14, 2025, responded to the August 4, 2025, request by referring Complainant to a publicly available website (enhanced access) that included the information requested, to the extent it was available in the normal course of business. Complainant argues that access to the website does not provide the information in the format requested and therefore did not comply with its APRA request. Complainant also contends that the information provided failed to include necessary codes needed to fully access the information on the website.

The Respondent provided Complainant with access to the records requested in a format that existed at the time of the request, a publicly available online system. APRA is for pre-existing records. APRA does not require the public agency to create lists or lists of records or reformat the information for the requestor. *Opinions of the Public Access Counselor 25-FC-219 & 25-FC-167.*

However, in *Opinion of the Public Access Counselor 12-FC-348*, requestor sought information from a database and wanted the information provided in an electronic format. When a record is created and maintained in an electronic format, which format is the form requested by the person seeking the record, the Public Access Counselor held that the public agency must make reasonable efforts to provide a copy of the record in the medium requested.

The Complainant states that the records requested are readily available in an electronic format including all the information that was requested. It is unclear from the formal response of Respondent if that is truly the case, but if Respondent was reasonably able to provide the records in the format Complainant requested then it should do so.

Respondent did provide access to the records and information requested by Complainant through Respondent’s online portal. Complainant stated that it did not have all of the access codes it needed to properly access the portal even then. This office encourages the parties to share the information necessary for Complainant to receive proper access to the portal.

Complainant also seems to take exception to Respondent's note, "Because of expungements under Indiana I.C. 35-38-9 we cannot release records in bulk outside of the above portal. Once expungements are completed the record will no longer be public access in the online portal."

It should be noted that in *Opinion of the Public Access Counselor 25-FC-104*:

IC 35-38-9-1(b) requires that "all records related to the criminal charges" be ordered expunged where a court dismisses criminal charges filed and pending against a person. Further,

IC 35-38-9-10 (i) An expungement case, and all documents filed in the case, becomes confidential when the court issues an expungement order....

Related: APRA at IC 5-14-3-4(a)(1), says:

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

This office is not going to regulate how a law enforcement agency implements this to legally comply and prevent accidental release of confidential records.

Complainant alleges Respondent violated APRA by failing to produce the records in a reasonable time frame. APRA provides that a public agency may not deny or interfere with the exercise of the right stated above. If the public agency does not deny the request, within a reasonable time after the request is received by agency the public agency shall either:

- (1) Provide the requested copies to the person making the request; or
- (2) Allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

IC 5-14-3-3(b).

APRA does not define the term "reasonable time". This office has in the past provided guidance on what would be considered a reasonable time for purposes of compliance with the APRA provisions. An informal benchmark this office observes for a typical response time would be thirty (30) days from the receipt of the request. *Opinion of the Public Access Counselor 20-FC-87*. However, this

office has further observed that many requests cannot be fulfilled within thirty (30) days for a variety of reasons. In those circumstances, this office considers the following factors:

- (1) the size of the public agency;
- (2) the size of the request;
- (3) the number of pending requests;
- (4) the complexity of the request; and
- (5) any other operational considerations or factors that may reasonably affect the public records process.

Opinion of the Public Access Counselor 25-FC-071.

Respondent did not respond to Complainant's records request of August 4, 2025, until November 14, 2025. Even given the administrative oversight, the requests for August 4 and 15, 2025, were acknowledged on August 28, 2025. In response, Complainant was referred to an online portal that contained the equivalent of the booking logs. Assuming the online portal was in existence and current on the date of the request, this office determines that the between two and a half (2.5) to over three (3) month delay in referring the Complainant to the portal was an unreasonable time for production of the records. Respondent should have directed Complainant to the portal within the first thirty (30) days.

Likewise, Respondent, at the date of the compliant, had not responded to the August 15, 2025, record request with a production of records. This also constitutes an unreasonable delay in fulfilling a records request.

CONCLUSION

This office finds that Respondent violated APRA in failing to provide records in a timely manner for the August 4 and 15, 2025, records requests.

In its response, Respondent stated, "[It] is fully committed to strict compliance with Indiana's Access to Public Records Act, I.C. § 5-14-3, *et seq.*, and remains dedicated to transparency, accountability, and timely communication in all matters of public record."

If records are still inaccessible or outstanding and should be provided, we encourage Respondent and Complainant to work together to complete these requests.



Jennifer G. Ruby
Public Access Counselor