



STATE OF INDIANA

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August 21, 2009

Matthew Wolfe
DOC #87203
4210 South 400 E-57
Churubusco, Indiana 46723

Re: Formal Complaint 09-FC-191; Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department

Dear Mr. Wolfe:

This advisory opinion is in response to your formal complaint alleging the Elkhart County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department did not substantially violate the APRA.

BACKGROUND

You allege that you have requested from the Department information related to activity in the jail on October 24, 2008. The Department has denied you access to the records on the basis that disclosure of such could affect the safety and security of the jail. You filed the present complaint on August 20. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to the complaint by letter dated August 20 from Trevor Wendzonka. The Department contends the records are nondisclosable at the discretion of the agency on the basis that disclosure could be a threat to facility security and public safety.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public

records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The APRA provides a number of categories of records which may be disclosed by an agency at the agency's discretion. A listing of such records may be found in I.C. § 5-14-3-4(b). One group of records which may be disclosed at the discretion of the agency is the following:

Records requested by an offender that:

...

(B) concern or could affect the security of a jail or correctional Department.

I.C. § 5-14-3-4(b)(23).

The APRA defines "offender" as "a person confined in a penal institution as the result of the conviction for a crime." I.C. § 5-14-3-2(i). Because you are an offender, the Department may withhold from disclosure records that "concern or could affect the security" of the Department. *See* I.C. § 5-14-3-4(b)(23).

The Department has provided an explanation as to how the release of the information you have requested could concern or affect the security of the Department. In my opinion, the Department's explanation is sufficient to demonstrate the records at issue fall within the exception to disclosure found in I.C. § 5-14-3-4(b)(23). I would note that the Department has claimed the exception to disclosure on the basis of I.C. § 5-14-3-4(b)(19). In my opinion the Department has cited the incorrect exception, as subsection (b)(19) addresses records which would expose the vulnerability of a terrorist attack. I understand the Department's contention to be that release of the information would compromise the safety and security of the facility. That falls under subsection (b)(23). To support nondisclosure on the basis of subsection (b)(19), the Department would need to show how release of the information would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack.

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Trevor Wendzonka, Elkhart County Sheriff's Department