



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Town South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

January 16, 2009

Jeffrey Bringle  
Box 3465 Virginia Street  
Columbus, Indiana 47203

*Re: Formal Complaint 09-FC-19 and 09-FC-20; Alleged Violation of the  
Access to Public Records Act by the Cumberland Police Department and  
Town of Cumberland*

Dear Mr. Bringle:

This advisory opinion is in response to your formal complaint alleging the Columbus Police Department and Town of Cumberland (collectively, "Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Town's response to the complaint is enclosed for your reference. Because the two complaints are similar and filed against two related agencies and because the Town provided one response to address both complaints, I have consolidated the complaints and now issue one opinion in response to both. In my opinion the Town has not violated the APRA.

## BACKGROUND

You filed the present complaints on January 9, 2009. You allege that on December 9, 2008 you hand delivered two similar requests for access to records to the Town. You allege you telephoned the Town on December 11, 12, 15 and 16 and learned the requests were forwarded to Town Attorney Dan Taylor. You telephoned Mr. Taylor on December 16, 22, and 29, and Mr. Taylor indicated he was working on answers to the requests. You indicate you have received nothing further as of the date of filing this complaint. You requested priority status for the complaints, alleging that you need the records for a proceeding before another agency. Pursuant to 62 IAC 1-1-3, priority status has been granted.

The Town responded to the complaints by letter dated January 14 from Clerk-Treasurer Grace Heck. The Town contends it did not know to whom to respond since you submitted the request anonymously and without providing any contact information. Further, the Town contends no person returned to the offices to retrieve a response. The Town contends that several days after the requests, you telephoned and indicated the Town should respond to you. The Town forwarded the requests to Mr. Taylor, who was

ill and unable to talk with you until December 22. Mr. Taylor indicated that because the persons about whom you requested records are not employees, the Town maintains no records responsive to your requests. Mr. Taylor offered to send you a copy of the Town's salary ordinance.

Finally, the Town contends it has difficulty ascertaining which documents are requested because you have requested information rather than documents.

## 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 Town 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 Town 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).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is made in person and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

You submitted the request to the Town on December 9. Pursuant to the APRA, the Town should have responded to the request within twenty-four hours, or by the same time the next business day. Here, though, you did not provide any contact information. As a practical matter, declining to provide any contact information certainly makes responding to the request difficult for the agency. Nothing in the APRA provides that the agency must work according to your schedule and provide you access to records or responses to requests only at times you determine. I would suggest that the Town would likely be better able to respond to your request within twenty-four hours if you provided a way the Town could contact you regarding the request.

Regarding the Town's failure to provide you the requested records, the Town contends it maintains no records responsive to your requests because the individuals about whom you requested information are not employees. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If the Town does not, and is not required to, maintain the requested records, it cannot provide you access to such records.

Finally, the Town contends your requests are for information rather than records. The APRA provides that a request must identify with reasonable particularity the record being requested. See I.C. § 5-14-3-3(a). "Reasonable particularity" is not defined in the APRA. "When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). "Particularity" as used in the APRA is defined as "the quality or state of being particular as distinguished from universal." *Merriam-Webster Online*, [www.m-w.com](http://www.m-w.com), accessed July 18, 2007. In other words, a request must specify the records to which you seek access. In the future, you should identify specifically which records you seek so the Town may retrieve those records and provide you access to the records, so long as an exception to disclosure does not apply.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Town has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Cumberland Police Department Acting Chief Michael Crooke  
Town of Cumberland Clerk-Treasurer Grace Heck