



# STATE OF INDIANA

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Noelle Steele  
*Daily Reporter*  
Via electronic mail to [nsteele@greenfieldreporter.com](mailto:nsteele@greenfieldreporter.com)

*Re: Informal Inquiry 08-INF-45 regarding unapproved plea agreements*

Dear Ms. Steele:

This opinion is in response to your informal inquiry dated December 8, 2008. You write on behalf of the *Daily Reporter* to inquire whether plea agreements which have been filed with the court but have not yet been approved by the judge are public records subject to disclosure pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

## BACKGROUND

You indicate you have requested from court administrators copies of plea agreements filed with the court but have not yet approved by the judge. You indicate the plea agreements are currently being withheld from disclosure. You contend they are part of the file of records which must be made available for inspection and copying. You have received an opinion from Steve Key of the Hoosier State Press Association and you now seek my opinion as well.

## 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. Both the court and office of the prosecuting attorney are public agencies for the purposes of the APRA. I.C. § 5-14-3-2(m). As such, any person has the right to inspect and copy the public records of a public agency 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 defines a public record as "any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received,

retained, maintained or filed by or with a public agency.” I.C. § 5-14-3-2(n). The APRA does not draw a distinction between draft or final documents or between approved or unapproved documents. Instead, the APRA provides that all materials created, received, retained, maintained, or filed by or with a public agency are public records. *Id.* This office has previously addressed a similar issue in the context of draft meeting minutes, and this office has consistently found that documents which have not yet been approved or finalized can still be considered public records. See *Opinions of the Public Access Counselor 98-FC-9* and *08-FC-178*, among others.

The plea agreements are public records of the court in that they are received by as well as filed with the court. It is my opinion the plea agreements as maintained by the court are public records once received by or filed with the court.

The next question, then, is whether the court may withhold the plea agreements from disclosure. The APRA places the burden of proof on the public agency which would seek to deny or withhold access to the record. I.C. § 5-14-3-1. While I do not have specific information regarding which court(s) have denied you access or what was the specific reason given for the denial, I do not find any specific statutory authority excepting the plea agreements from disclosure. I have read Mr. Key’s analysis regarding I.C. § 35-35-3-3 and Indiana Supreme Court Administrative Rule 9, and I agree neither of those authorities specifically excepts the pleas agreements from disclosure. Unless the court can support nondisclosure on the basis of some other authority, it is my opinion the plea agreements should be disclosed.

I would remind you, though, that the APRA does not provide a specific timeline for disclosure of records. In other words, the agency is not required to immediately produce the records upon request. Rather, the agency should provide you access to the records in a reasonable period of time, considering the facts and circumstances.

Please do not hesitate to contact our office if we can be of further assistance.

Best regards,



Heather Willis Neal  
Public Access Counselor