



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
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July 6, 2015

Mr. Thomas J. Westgard  
4511 Lanam Ridge  
Nashville, IN 47448

*Re: Formal Complaint 15-FC-181, 182, and 183 (Consolidated); Alleged Violation of the Access to Public Records Act by the Brown County Prosecutor's Office; Brown County Sheriff's Office; and Brown County Board of Health*

Dear Mr. Westgard,

This advisory opinion is in response to your formal complaint, which alleges the Brown County Prosecutor's Office ("Prosecutor"); Brown County Sheriff's Office ("Sheriff"); and Brown County Board of Health ("Board"), (collectively "Brown County") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* On June 18, 2015, the County responded to your complaint. The responses are enclosed for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaints received by the Office of the Public Access Counselor on May 21, 2015.

## **BACKGROUND**

Your complaints dated May 21, 2015 allege the Brown County Prosecutor's Office violated the Access to Public Records Act by failing to provide the records you requested.

On May 6, 2015, Brown County officials visited a property to investigate public health violations. At that time, you requested a warrant from the officials and were told one existed. You spoke with the Prosecutor that day, who informed you no warrant existed. You were informed by the Board of Health there was no regular practice of getting warrants.

On May 7, 2015 you hand-delivered a request for records, including

1. Any list of properties visited or inspected by the Board of Health, or related documents
2. Any documents identifying the residences entered by Board of Health employees.
3. Any documents identifying law enforcement personnel who entered a residence.



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4. Any search warrant pursuant to the inspections.

In response, you were told your request lacked particularity and the records requested were protected under the work product and attorney-client privileges. The prosecutor also said the warrants you requested could be found at the clerk's office.

The Prosecutor responded to your complaint on June 18, 2015. In addition to citing a lack of particularity, the Prosecutor contends it "does not feel compelled to turn over any open or pending investigations ... that could lead to future potential prosecution of any criminal or quasi-criminal investigations."

The Sheriff and Board both denied your request as lacking reasonable particularity.

## ANALYSIS

The public policy of the 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." See Ind. Code § 5-14-3-1. The Brown County Prosecutor's Office, Sheriff's Department and Board of Health are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office's/Department's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

Reasonable particularity is not defined under the APRA. If a public agency cannot in good faith determine what records are sought, then the request is determined to lack reasonable particularity. You object to the assertion your request was overly broad because you limited your search to within the past two (2) years. However, it is unknown how many inspections were performed by Board officials in the last two (2) years. Not knowing how many inspections were performed, it is impossible to know the volume of records which would be responsive. Therefore, your request does appear to lack particularity unless a master list exists with this data and information. While it is not necessary to identify a document with pinpoint accuracy, it should be a document which you are aware of or suspect to exist.

Much is made in your regarding the "daily log" requirement under Ind. Code § 5-14-3-5(c) which states that law enforcement agencies must create a daily log of that lists



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suspected crimes, accidents, or complaints, and a public record must be made of certain elements of those runs. It should be noted that local health departments are not an arm of law enforcement and therefore this daily log is not required. Conversely, however, the Prosecutor also alleged the investigatory exemption. The release of investigatory records of law enforcement agencies is discretionary pursuant to Ind. Code § 5-14-3-4(b)(9).

At the time of an investigation pursuant to Ind. Code § 16-20-1-23, a local health agent is not investigating a crime as defined by Ind. Code § 35-41-1-6 as a misdemeanor or a felony. A health violation is not a *de facto* crime and is not subject to this exception before involvement by a local prosecutor or law enforcement official.<sup>1</sup>

This appears to be a moot point, however, as the Prosecutor claims to not have any records relating to this information. The APRA does not require a public agency to provide access to records it does not possess. For these reasons, there does not appear to be a violation.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that Brown County has not violated the Access to Public Records Act

Regards,

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Luke H. Britt  
Public Access Counselor

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<sup>1</sup> Much of your complaint is focused on your perception of a warrantless search and seizure in violation of your Fourth Amendment rights. A review of Ind. Code § 16-20-1-23 appears to address the scenario you describe and lays out the limits of public health official's inspection of private property. In any event, this matter is well beyond the purview of the Public Access Counselor and will not be addressed substantively.



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