

January 7, 2008

Vickie Graziani
c/o John Emry
62 West Jefferson Street
Franklin, Indiana 46131

Re: Formal Complaint 08-FC-5; Alleged Violation of the Access to Public Records Act by the Switzerland County Sheriff

Dear Ms. Graziani:

This advisory opinion is in response to your formal complaint alleging the Switzerland County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Sheriff has violated the Access to Public Records Act.

BACKGROUND

In your complaint you allege that you requested from the Sheriff incident or police reports for law enforcement activity at the Switzerland County High School for August 24, 2005 and September 28, 2005. You allege that the Sheriff told you it was up to your attorney to obtain the records. You do not indicate the date you requested the record but indicate the denial of access occurred on December 7, 2007. You filed this complaint on December 10.

The Sheriff did not respond to your complaint at my invitation to do so.

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. 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 Sheriff is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Sheriff 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).

Investigatory records of law enforcement agencies shall be excepted from disclosure at the discretion of the public agency. I.C. §5-14-3-4(b)(1). "Investigatory record" means information compiled during the course of the investigation of a crime. I.C. §5-14-3-2(h).

Certain records of law enforcement agencies, though, must be disclosed: information relating to arrest and summons, information relating to a person received in jail or lock-up, and daily log information. I.C. §5-14-3-5. The daily log that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (1) The time, substance and location of all complaints or requests for assistance.
- (2) The time and nature of agency's response to all complaints or requests for assistance.
- (3) If the incident involves and alleged crime or infraction:
 - (A) The time, date and location of the occurrence;
 - (B) The name and age of any victim, unless it's a victim under Ind. Code 35-42-4;
 - (C) The factual circumstances surrounding the incident; and
 - (D) A general description of any injuries, property, or weapons involved.

This information must be made available for inspection and copying. The record must be created no later than 24 hours after the suspected crime. I.C. §5-14-3-5(c).

If the records you have requested from the Sheriff are not investigatory records and/or fall into one of the categories of records required to be disclosed pursuant to I.C. §5-14-3-5, the Sheriff must disclose the records. Nothing the APRA requires a requester to obtain a subpoena or engage legal counsel to obtain access to public records.

If the Sheriff denies access to the records and your request was made in writing, the denial must be made in writing and must contain the specific statutory authority allowing or requiring nondisclosure and an indication of the name and title of the person responsible for the denial. I.C. §5-14-3-9(c).

CONCLUSION

For the foregoing reasons, it is my opinion the Sheriff has violated the APRA by denying you access to public records.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Sheriff Nathan Hughes