

March 28, 2008

Bruce Brightwell
1212 State Street
New Albany, Indiana 47150

Re: Formal Complaint 08-FC-81; Alleged Violation of the Access to Public Records Act by the Floyd County Sheriff's Office

Dear Mr. Brightwell:

This advisory opinion is in response to your formal complaint alleging the Floyd County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. I have enclosed a copy of the Sheriff's response to your complaint for your reference. It is my opinion the Sheriff did not violate the APRA.

BACKGROUND

In your complaint you allege that you submitted a request dated March 5, 2008 to the Sheriff for copies of a number of records related to towing of motor vehicles. You filed this complaint on March 14, alleging you had received no response from the Sheriff.

The Sheriff responded to the complaint by facsimile transmission dated March 25. The Sheriff contends the office received your request on or about March 12. The Sheriff provided a copy of the response, dated March 17, to your request. In the response to you, the Sheriff indicated the office is assessing the scope and nature of the request. The Sheriff provided further information regarding towing services utilized by Floyd County officers. Finally, the Sheriff indicated that records you seek related to a specific case will not be released until the criminal investigation is complete.

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 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).

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 delivered by mail and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

The Sheriff contends the office received the request on or about March 12. Pursuant to I.C. § 5-14-3-9(b), the Sheriff responded by letter dated March 17. So long as the request was not received more than two days prior to March 12, this response was timely under the APRA.

The Sheriff's response that the office is assessing the scope and nature of the request is appropriate under the APRA. Nothing in the APRA requires the agency to provide the records requested within a defined amount of time. 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). Previous public access counselors have 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. So long as the Sheriff provides any records responsive to the request within a reasonable period of time, the Sheriff has not violated the APRA.

Regarding the Sheriff's indication that records relating to a particular case will not be released, I assume the Sheriff relies upon the investigatory records exception found in I.C. § 5-14-3-4(b)(1), which allows a law enforcement agency to withhold from disclosure records compiled during the course of an investigation of a crime. Because the Sheriff is a law enforcement agency (*See* I.C. § 5-14-3-2), the Sheriff may withhold records compiled during the course of the investigation of a crime.

CONCLUSION

For the foregoing reasons, it is my opinion the Sheriff did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: J. Scott Waters, IV, Waters, Tyler, Scott, Hofmann and Doane, LLC
Darrell Mills, Floyd County Sheriff