



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 19, 2010

Mr. Fred Peters  
DOC # 26498  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, IN 47838

*Re: Formal Complaint 10-FC-10; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff*

Dear Mr. Peters:

This advisory opinion is in response to your formal complaint alleging the Marion County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. The Sheriff's response to your complaint is enclosed for your review.

## BACKGROUND

According to your complaint, you requested records from the Sheriff regarding your arrest in 1982. You believe that the Sheriff violated the APRA by failing to "put down the specific person & their position of who denied," and by denying you access to the arrest records.

My office forwarded a copy of your complaints to the Sheriff. Sheriff's Legal Counsel Kevin C. Murray asserts that a check of the Sheriff's records could not locate the records you sought. Mr. Murray states that the Sheriff does not have records from 1982 as those records were properly disposed of in accordance with its retention schedule.

## 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." Ind. Code § 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

Sheriff's public records 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).

When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, the Sheriff responded with a letter from Mr. Murray. Mr. Murray did not cite any exemption to the APRA as a basis for withholding records from you because the Sheriff does not have any responsive records. The Sheriff did not need to cite an exemption under such circumstances because if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request on that basis. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy....").

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Sheriff did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Kevin C. Murray, Marion County Sheriff's Department