



STATE OF INDIANA

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September 16, 2010

Mr. Ross E. Martinie Eiler
573 Graham Place
Bloomington, IN 47401

Re: Formal Complaint 10-FC-182; Alleged Violation of the Access to Public Records Act by Monroe County Sheriff's Office

Dear Mr. Martinie Eiler:

This advisory opinion is in response to your formal complaint alleging the Monroe County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the Sheriff's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you requested certain records from the Sheriff, including information about the rights and rules given to inmates at the jail, records of internal grievances submitted by inmates, and other records including the Sheriff's annual report and the estimated daily cost of each inmate. You claim that your "initial requests to Jail Commander Bill Wilson were ignored," so you submitted a request in person using the Sheriff's Public Information Request Form. You also notified the office that you would expect a response within 24 hours, which you claim was "met with chuckles and dismissal." When you returned to the office in 24 hours, you claim the Sheriff did not give you a response or an estimated response or production date other than to say that "it will probably take a very long time, if you are able to see them at all."

We also received a letter from you dated August 25, 2010. In that letter, you include additional information about developments with this matter subsequent to the submission of your formal complaint. Specifically, you claim that your rights as a volunteer at the Monroe County Jail were terminated the day after your formal complaint was received by the Sheriff. At that time, the volunteer coordinator for the jail informed you that you were "banned" from the jail. When you inquired as to why that decision was made, no answer was given, but you believe it could have been in retaliation for filing your complaint. You also note that you received the Sheriff's response to you on

August 21st, but the response was dated August 13th and you claim that “cross-town mail almost never takes more than forty-eight hours [to deliver].”

In response to your complaint, the Sheriff states that you filed five (5) different requests for documents on August 12th. The Sheriff claims that his office mailed a written response to you at your address on August 13th. With regard to the computations of the average daily cost of prisoners, the Sheriff claims that the Indiana Department of Correction (“DOC”) is responsible for developing a methodology for calculating such cost but has not yet done so. As a result, the Sheriff is unable to provide you with that information. In response to your request for grievance records, the Sheriff states that “IC 5-14-3-5 (copy attached and marked exhibit 5) is dispositive of what jailed persons and agency records are available for inspection and copying.” The Sheriff granted your requests for access to jail inspection reports, the rules and regulations given to inmates upon booking into the facility, and the Sheriff’s annual report. Copies of these records are available to you upon the Sheriff’s receipt of the appropriate copy fees.

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.” I.C. § 5-14-3-1. The Sheriff is 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 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 or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Sheriff claims that his office mailed you a response to your request the day after you submitted it. If that is true, the Sheriff complied with section 9 of the APRA.

It is my understanding that the Sheriff granted your request for access to all records other than the grievance records and the calculations for the daily cost of housing an inmate. With regard to the grievance records, it is unclear why the Sheriff has refused to produce those records to you. The Sheriff cites to section 5 of the APRA, which contains requirements for releasing certain information about jailed persons. The Sheriff is, presumably, willing to release that information to you in accordance with the requirements of the APRA. However, the Sheriff states that the information in section 5 is “dispositive of what jailed persons and agency records are available for inspection and copying.” Under the APRA, a public agency that withholds a public record bears the

burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Thus, if the Sheriff maintains other grievance records that are responsive to your request, the Sheriff should either cite a basis in the APRA for withholding those records or allow you access to them.

If the Sheriff does not maintain records that contain information regarding the estimated daily cost of inmates, the Sheriff did not violate the APRA by failing to produce such records to you. *See, e.g., Opinion of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”)

I trust that the Sheriff’s willingness to grant you access to the other records you requested satisfies the remaining portions of your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Sheriff is withholding grievance records that are responsive to your request, the Sheriff should either produce those records or cite a legal basis for withholding them. The Sheriff has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Sheriff James L. Kennedy