



# STATE OF INDIANA

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October 27, 2010

Mr. Delmas Sexton III  
Block F3220  
Allen County Jail  
417 South Calhoun St.  
Fort Wayne, IN 46802

*Re: Formal Complaint 10-FC-227; Alleged Violation of the Access to Public Records Act by the Allen County Sheriff and Jail*

Dear Mr. Sexton:

This advisory opinion is in response to your formal complaint alleging the Allen County Sheriff and Jail ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* As of today, we have not received a response from the Facility.

## BACKGROUND

In your complaint, you allege that the Facility denied you access to a copy of a court order regarding yourself and records regarding civilian confinement officers and law enforcement officers at the Facility. The Facility denied your request for the court order on the basis that it is maintained by the judge who heard the case. In response to your request for information regarding officers, the Facility denied your request and informed you that "no officer person [sic] information will be given...."

## 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 Facility 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 Facility'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).

With regard to your request for a court order, the Facility denied your request and referred you to the judge who heard your case. In my opinion, the Facility did not violate the APRA by referring you to the agency that maintains the record you requested. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he 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....”).

It is unclear to me why the Facility denied your request for records pertaining to the Facility’s officers. Without the benefit of a response from the Facility, I do not have sufficient information to determine whether or not the substance of the denial violated the APRA. 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. Because the Facility has not provided a justification for withholding the records at issue here, it is my opinion that the Facility has failed to carry that burden.

I note, however, that the APRA states that a public agency may not disclose records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the Indiana Department of Correction (“DOC”) may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). If the records you seek constitute classified records under these rules, the Facility would not violate the APRA by denying your request. See also *Opinion of the Public Access Counselor 05-FC-40*.

Moreover, it is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. See I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information related to employees of correctional facilities, specifically excepting the following:

- Records requested by an offender that:
  - (A) contain personal information relating to:
    - (i) a correctional officer (as defined in IC 5-10-10-1.5);
    - (ii) the victim of a crime; or
    - (iii) a family member of a correctional officer or the victim of a crime; or
  - (B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23). Thus, to the extent you are requesting personal information relating to a correctional officer or family member of a correctional officer or records that concern or could affect the facility's security, the Facility acts within its discretion when it denies access to such records. Again, the Facility bears the burden of proof to sustain its denial. *See* I.C. § 5-14-3-1.

If the Facility cannot justify withholding the records regarding officers, I encourage the Facility to release the records to you as soon as possible. To the extent the Facility persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Facility to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

### CONCLUSION

For the foregoing reasons, it is my opinion that the Facility did not violate the APRA by denying your request for a record that is maintained by a court. Further, it is my opinion that the Facility has not sustained its burden of proof to demonstrate that it had a legal basis to withhold the records pertaining to its law enforcement officers. However, if the Facility can meet its burden of proof under one of the aforementioned exceptions to the APRA, the Facility has not violated the APRA by denying your request.

Best regards,



Andrew J. Kossack  
Public Access Counselor