



# STATE OF INDIANA

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June 27, 2011

Mr. Clayton Hickey  
DOC #: 166815  
Indiana State Prison  
1 Park Row  
Michigan City, IN 46360

*Re: Formal Complaint 11-FC-131; Alleged Violation of the Access to  
Public Records Act by the Starke County Sheriff's Department*

Dear Mr. Hickey:

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

## BACKGROUND

According to your complaint, on May 6, 2011, you submitted a request to the Starke County Sheriff's Department for access to copies of various booking and bond records. Specifically, you requested "[your] inmate/book in-records, showing the date of arrest, and the date [you] were taken to R.C.D. [sic] Along with the dates of any bonds being posted, or if [you] was released. [sic] And when any and all bonds were ordered revoked." You indicate that on May 11, 2011 you were sent a letter from the Starke County Sheriff's Department advising that the records you requested needed to be requested from the Starke County Clerk's Office. You allege that you forwarded your request to the Starke County Clerk on May 17, 2011, with a copy of the letter from the Starke County Sheriff's Department attached. You make no mention of any response on behalf of the Starke County Clerk's Office.

In response to your formal complaint, Office Manager Christina Smith advised that the information you requested was to be obtained through the Starke County Clerk's Office. Ms. Smith stated that she is unaware of whether you ever made your request of the Clerk's Office. Ms. Smith, along with her response, provided this office a copy of your book-in record. This office contacted Ms. Smith to follow-up regarding access to additional records pursuant to your request. Ms. Smith advised that the Department

maintained only your booking records, any that bond or release records can be accessed through the Clerk.

## 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 Department does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Department states that it does not maintain any bond or release records. 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 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...”). Thus, the Department did not violate the APRA by failing to provide you with bond or release records.

Although the Department does not maintain records relating to your release or bond, I note that the Department does maintain your book-in records. Accordingly, the Department should have produced those records to you pursuant to your request.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA by failing to produce records (i.e., bond or release records) that it does not maintain. It appears the Department did, however, violate the APRA by not producing your book-in records because the Department does maintain those records. The Department has now released those records in satisfaction of your complaint.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Christina Smith