



# STATE OF INDIANA

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July 7, 2011

Ms. Mary Perren  
Pulaski County Press, Inc.  
114 W. Main Street  
Winamac, IN 46996

*Re: Formal Complaint 11-FC-141; Alleged Violation of the Access to Public Records Act by the Starke County Probation Department*

Dear Ms. Perren:

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

## BACKGROUND

In your complaint, you allege that you requested information about the probation status of an individual who was arrested on a felony drug charge in Pulaski County on June 3, 2011. The individual's probation officer denied your request and told you that you would need to contact the clerk's office. The Department did not cite a statutory basis for denying your request.

In response to your complaint, Department Chief Probation Officer John Thorstad states that the records you requested are confidential pursuant to Ind. Administrative Rule 9 and the applicable Indiana Probation Standards promulgated by the Judicial Conference of Indiana under Ind. Code § 11-13-1-8(b).

## 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 Department does not dispute that it 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 Department'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).

It appears that the Department's response did not comply with the APRA's provisions governing procedures related to denying a records request. *See generally* I.C. § 5-14-3-9. Under the APRA, when a records request is made in writing and an 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). In other words, the Department's denial should have cited to Ind. Code § 11-13-1-8(b) and Admin. R. 9 as the basis for its denial rather than simply referring you to another agency. Thus, the Department's apparent failure to do cite a statutory basis for its denial constitutes a procedural violation of section 9 of the APRA.

That said, the Department did not substantively violate the APRA by refusing to provide you with the probation records. Under section 4 of the APRA, a public agency may not disclose records declared confidential by rules adopted by the supreme court of Indiana. I.C. § 5-14-3-4(a)(8). Confidentiality of court records is governed chiefly by Administrative Rule 9, which was adopted by the Indiana Supreme Court. As the Department noted in its response, Admin. R. 9 list several categories of confidential records, including "[i]nformation in probation files pursuant to the Probation Standards promulgated by the Judicial Conference of Indiana." Admin. R. 9(G)(xv). The Indiana Probation Standards provide that "[i]nformation contained in probation files shall be confidential and shall not be released without the approval of the judge." Ind. Probation Standards IV(A)(1.4). Based on these provisions, the Department acted appropriately by refusing to provide you with the probation records you requested.

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the Department failed to cite a statutory basis for its denial, the Department violated the APRA's procedural requirements for denying a records request. However, the Department did not otherwise violate the APRA because the probation records you requested are confidential.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: John Thorstad