



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 16, 2011

Michael J. Shepard  
3500 N. Harlan Avenue  
Evansville, Indiana 47711

*Re: Formal Complaint 11-FC-306; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Confinement Center*

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Confinement Center ("Center") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Rhett Gonterman, Attorney, responded on behalf of the Center. His response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(3).

## BACKGROUND

In your formal complaint, you allege that the Center has failed to respond to your repeated written requests for records submitted via the Center's Administrative Services Kiosk. On four separate occasions, beginning on November 14, 2011, you requested a copy of the no-bond hold currently lodged against Cause No. 82-D02-1108-FB-848. On November 29, 2011, you submitted a request for copies of records related to grievance cases 2700 and 2802. As of December 9, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Center has failed to respond or provide any records pursuant to your request.

In response to your formal complaint, the Center provided that it has previously provided to you with the requested documents in electronic form via the Administrative Services Kiosk. Your request that the Center reproduce the documents in a medium not utilized by is unreasonable and unduly burdensome. The APRA does not provide that records be provided in multiple forms.

## 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." *See*

I.C. § 5-14-3-1. The Center is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Center's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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, you allege that you have never received any records in response to your requests. The Center has provided that you have received all records in response to your prior requests via the Administrative Services Kiosk. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. If you have never received the records requested from the Center, it has acted contrary to the APRA. However, if all records have been provided to you via the Administrative Services Kiosk, then the Center has not violated the APRA.

The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). In the future, should you specifically request paper copies of the record, as opposed to an electronic version, the APRA provides the following:

If:

(1) a person is entitled to a copy of a public record under this chapter;

and

(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record; the public agency must provide at least one (1) copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance. I.C. § 5-14-3-8(e).



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As such, if the Center has reasonable access to a machine capable of reproducing the document, you would be entitled to a paper copy of the record in response to your specific request. However, the Center would be entitled to charge you for paper copies pursuant to I.C. § 5-14-3-8, as opposed to electronic copies that are generally provided via the Administrative Services Kiosk.

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Center provided all records in response to your request electronically via the Administrative Services Kiosk, it did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Rhett Gonterman