



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 30, 2011

Timothy J. Kopkey
DOC 153747
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 11-FC-314; Alleged Violation of the Access to Public Records Act by the Pulaski County Sheriff's Department

Dear Mr. Kopkey:

This advisory opinion is in response to your formal complaint alleging the Pulaski County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sheriff Michael Gayer responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department on December 4, 2011 for discovery pursuant to 66-C01-1104-PC-0001 and/or 66-C01-0407-FB-0003 so that you may obtain records regarding your arrest and a copy of the Department's radio log from the morning of June 25, 2004.

In response to your formal complaint, Sheriff Gayer advised that you plead guilty in March of 2005 under Cause Numbers 66-C01-0407-FB-003 and 66-C01-0407-FB-006 in the Pulaski County Circuit Court. As you seek information for a Discovery Motion in a case to which you plead guilty, the Department has been advised by the Pulaski County Prosecutor that you do not have the right to obtain the information requested.

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 Department 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 Department'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).

The APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. You submitted a discovery request to the Department pursuant to Cause Numbers 66-C01-1104-PC-0001 and 66-C01-0407-FB-0003. After reviewing the plain language of your request and reviewing the Department's response, it is evident that the Department interpreted it as a discovery request, not as one made pursuant to the APRA. I believe that the Department interpretation of your request being made pursuant to your criminal proceedings, not the APRA, was reasonable in light of the language and conflicting nature of what you submitted. As such, your request was made through means outside the scope of the APRA.¹ *See Opinions of the Public Access Counselor 07-FC-314 and 08-FC-324.* If you continue to believe that the Department failed to respond to your discovery requests, you would need to file an appropriate motion with the Pulaski County Circuit Court.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Sheriff Michael Gayer

¹ In the future, I would note to the Department that all records responsive to a properly submitted APRA request must be provided, minus the applicable statutory exceptions, *regardless* of whether Mr. Kopkey plead guilty in a separate criminal proceeding (emphasis added). However, it would appear that many, if not all, of the records sought by Mr. Kopkey would be considered investigatory records of a law enforcement agency to which the Department would have discretion whether to disclose the records in response to an APRA request. *See* I.C. § 5-14-3-4(b)(1).