



# STATE OF INDIANA

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April 19, 2012

Victor Salazar  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 12-FC-100; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Sheriff's Department*

Dear Mr. Salazar:

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

## BACKGROUND

In your formal complaint, you allege that on February 20, 2012, you submitted a written request to the Department for the following records:

- The entire disciplinary record and criminal record for Sean Barnes, Dan Cordell, William M. Anderson, Tracy A. Brown, Denis K. Saxton, James D. Caldwell, Nikkie Heath, Jason Dexter, Deanna L. Taylor, Mark Louthen, Bill Deneemus, and Patrick E. Robertson.
- Provide the names of all female officers and nurses, who were fired, quit, or retired in 2002, and the factual basis for their employment termination.
- The Department's policies and procedures on maintaining and destroying its surveillance footage

On March 23, 2012, Mr. Masson responded to your request on behalf of the Department. The Department acknowledged its failure to respond to your initial request pursuant to the requirements of section 9 of the APRA. As to the substance of your request for the disciplinary records of specific individuals, the Department exercised its discretion pursuant to I.C. § 5-14-3-4(b)(23) as you are an offender as defined by the APRA and the individuals that are the subject of your request are considered to be correctional officers pursuant to I.C. § 5-10-10-1.5. As to your request for a list of all female officers and nurses, as the request was not particularized by individual, the Department denied your request pursuant to I.C. § 5-14-3-4(b)(8). Further, I.C. § 5-14-3-4(b)(23) would still be

applicable for the same reasons as provided in response to your first request. As to your request for specific individual's criminal history, that information is governed by I.C. § 10-13-3, to which you would not be entitled as you failed to meet the requirements of I.C. § 10-13-3-27(a). Lastly, your request for policies and procedures regarding the retention and destruction of surveillance footage, the Department exercised its discretion pursuant to I.C. § 5-14-3-4(b)(23) to deny your request.

In response to your formal complaint, Mr. Masson again acknowledged that the Department failed to respond to your request pursuant to the time requirements provided in section 9 of the APRA. As to the substance of your request, Mr. Masson again cited to I.C. § 5-14-3-4(b)(23) which allows the Department discretion in providing records to an offender that contain personal information related to a correctional officer or concern of affect the security of a jail.

### 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 considered to be public agencies pursuant to 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).

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, the Department acknowledged that it failed to respond to your written request for records within seven (7) days of its receipt. As such, it is my opinion that the Department acted contrary to APRA by failing to respond to your written request in accordance with section 9.

It is my understanding based on the Department's assertion and based on your mailing address that you are confined in a penal institution as the result of the conviction for a crime. 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 Department acts within its discretion when it denies access to such records. The Department bears the burden of proof to sustain the denial. *See* I.C. § 5-14-3-1. It is my opinion that the Department has met its burden of proof in response to your request for records.

The APRA states that a public agency may not disclose records that are declared confidential by state statute." *See* I.C. § 5-14-3-4(a)(1). Indiana law provides that limited criminal history information may not be released except under specific circumstances. *See* I.C. § 10-13-3-27. "Limited criminal history" is defined as information with respect to any arrest or criminal charge, which must include a disposition." *See* I.C. § 10-13-3-11. Limited criminal history is subject-specific; in other words, a limited criminal history relates to a particular person about whom the information pertains. *See generally* I.C. § 10-13-3. Indiana Code § 10-13-3-31 provides:

Release of data to subject person; fee; challenge of data authorized Sec. 31. (a) Unless otherwise prohibited by law, a criminal justice agency that maintains criminal history data, upon request and proper identification of the person about whom criminal history data is maintained, shall provide that person with a copy of the person's criminal history data for a reasonable fee. (b) Any person may challenge the information contained in the person's criminal history data file.

You have failed to demonstrate that your request for criminal records of certain individuals meets the criteria as established by I.C. § 10-13-3, as such the Department complied with the requirements of the APRA and I.C. § 10-13-3 in denying your requests.

Lastly, the APRA provides a discretionary exception to disclosure for most personnel file information. While certain personnel file information must be disclosed, the exception provides that the subdivision requiring such disclosure "does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name." I.C. § 5-14-3-4(b)(8). In other words, the Department is not required to provide you with the requested information because you have requested the information generally on employees of Department. *See Opinion of the Public Access Counselor 04-FC-98*. Moreover, the APRA does not require a public agency to create a new record or compile a list in order

to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56.*

### CONCLUSION

For the foregoing reasons, it is my opinion that the Department acted contrary to section 9 of the APRA by failing to respond to your written request within seven (7) days of its receipt. As to all other issues, 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". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage  
Public Access Counselor

Cc: Douglas Masson