



# STATE OF INDIANA

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August 17, 2012

Cindy Faulkner  
62 W. Jefferson St.  
Franklin, Indiana 46131

*Re: Formal Complaint 12-FC-202; Alleged Violation of the Access to Public Records Act by the Trafalgar Town Marshall*

Dear Ms. Faulkner:

This advisory opinion is in response to your formal complaint alleging the Trafalgar Town Marshall ("Marshall") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Marshall. As of today's date, we have yet to receive a response.

## BACKGROUND

In your formal complaint, you allege that on July 17, 2012, you made a request to the Marshall for certain police reports. The Marshall required that you produce your driver's license before any records would be provided. You complied with the request because you were intimidated and required the records. The Marshall made a copy of your driver's license and returned it to you. Thereafter, a copy of your Tennessee driver's license was sought; as the Marshall was aware you had another residence in Tennessee. When you informed the Marshall that you did not have a Tennessee driver's license, the Marshall proceeded to copy your license plate and VIN number from your vehicle. You eventually received all records that were responsive to your request; however you allege that the Marshall's actions violated the APRA.

## 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 Marshall 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 Marshall'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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

Counselor Kossack addressed a similar issue in 2010. *See Opinion of the Public Access Counselor 10-FC-174*. Counselor Kossack opined:

With regard to the fact that the Form asks for a copy of the requester's driver's license and requires that the request be signed under oath, the APRA contains no such requirements. Thus, the burden is on the Prosecutor to show why such procedures are necessary. *See* I.C. § 5-14-3-1. In 2004, Counselor Davis issued an opinion regarding the legality of a public records request form used by a county planning commission. In that matter, the form restricted requesters' ability to request public records to a certain category of records. Counselor Davis opined that the form violated the APRA, and she added that the form's requirement that the request be typewritten was an illegal interference with the right to inspect and copy public records:

Upon review of the form provided to you, I find . . . that it allows a requestor to request access only to a certain type of information, not all public records maintained by the agency. Because the Commission failed to respond to your requests, I do not know if your request was or would have been denied on the basis that it was not submitted on the Commission's form. To the extent that the Commission requires a person to submit requests for records on this form, and the form allows a person to request only a certain type or types of records and excludes requests for other records, use of that form denies and interferes with the exercise of a person's right to inspect and copy the public records of the agency. Therefore, required use of such a form is a violation of the Access to Public Records Act. . . .

You further allege that the Commission requires that the records request form be typewritten. While an agency may require that a request for public records be submitted in writing, it cannot require that the request be typewritten. Few people have access to the means with which to submit a typewritten request. Therefore, requiring a request be in such a format denies and interferes with the exercise of a

person's right to inspect and copy the public records of a public agency.

*Opinion of the Public Access Counselor 04-FC-167.* Similarly here, unless the Prosecutor can show that requiring requesters to submit a request under oath with a copy of the requester's driver's license is necessary to safeguard confidential records or comply with some other applicable statute or rule, it is my opinion that such requirements interfere with the rights of a requester under subsection 3(a) of the APRA. See *Opinion of the Public Access Counselor 10-FC-174.*

Without the benefit of a response from the Marshall, it is unclear to me why your driver's license was required in order for your request to be processed. It is my opinion that the Marshall violated the APRA in requiring that a copy of your driver's license be provided before it produced any records that were responsive to your request. As provided by Counselor Kossack, unless the Marshall can demonstrate that requiring a copy of a requester's driver's license is necessary to safeguard confidential records or comply with some other applicable statute or rule, said requirement would interfere with the rights of a requester provided under section 3(a) of the APRA.

#### CONCLUSION

For the foregoing reasons, it is my opinion that that the Marshall violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Trafalgar Town Marshall