



# STATE OF INDIANA

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September 6, 2012

Kelly S. Gaskill  
6838 S 50 W  
Pendleton, Indiana 46064

*Re: Formal Complaint 12-FC-218; Alleged Violation of the Access to Public Records Act by the Madison County Commissioners*

Dear Ms. Gaskill:

This advisory opinion is in response to your formal complaint alleging the Madison County Commissioners (“Commissioners”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Gerald Shine, Shawn Swindell, and Steffanie Owens responded in writing to your formal complaint. Their responses are enclosed for your reference.

## BACKGROUND

In your formal complaint you provide that pursuant to I.C. § 34-11-1-2, the County/Local Retention Schedule for routine surveillance recordings is thirty days if no improper or illegal activity is captured on the recording. If improper or illegal activity is captured, the Retention Schedule provides that the recording be retained for the longer of the duration of the criminal proceedings and appeals or ten years.

On April 23, 2012, you allege that the Commissioners denied your request for a copy of surveillance footage taken from the Madison County Government Center (“Government Center”) on April 4, 2012 from 3:00 p.m. to 3:30 p.m. Ms. Swindell advised that the security recordings are automatically recycled once the hardware space has been maximized, which is generally every sixteen to nineteen days. Ms. Swindell provided that the recordings from April 4, 2012 had already been recycled. Your original request for the recordings was submitted on April 23, 2012.

On June 27, 2012, you submitted a second request for surveillance footage taken from the basement, first floor, second floor, and any external camera located at the entrance of the Government Center from June 14, 2012 through June 27, 2012. After further discussions with the Commissioners, you modified the dates of your request to June 25, 2012 through June 27, 2012. After initially providing that certain surveillance

footage would be made available to you, on July 31, 2012, you were advised that the records no longer exist.

In response to your formal complaint, Mr. Shine advised that on July 19, 2012, he was requested by Commissioner Owens to meet with you regarding your records request. On July 20, 2012, Mr. Shine emailed you inquiring whether you would be able to meet with him on July 23, 2012. Mr. Shine provided that you contacted him on July 23, 2012 after which he met with county security staff on July 24, 2012 to observe the security system, cameras, and availability of the information. Mr. Shine then advised you that three cameras were available for June 25-27, 2012. He further advised county security to copy those dates onto compact disc.

On July 26, 2012, Mr. Shine was advised by county security staff that they were unable to make recordings of the surveillance footage that had been requested. Mr. Shine then contacted the county's former vendor, Lectro. On July 30, 2012, a representative from Lectro came to the Government Center to attempt to download the required software. At that time, the representative advised that the recordings were no longer in existence. Upon being made aware of this, Mr. Shine immediately advised what had been discovered.

Ms. Swindell advised that the current surveillance system at the Government Center was utilized by the Madison County Sheriff's Department before a new system was purchased for the Detention Center. The system is approximately twelve years old and budget shortfalls have prevented the County from purchasing new equipment. The system was programmed to recycle on average every sixteen to nineteen days, or once space capacity had been reached. Programming beyond this span results in skewed video images because it is a motion-censored system, which would offer little value to the security operations of the Government Center. The recordings that were sought were unable to be saved without compromising the current day-to-day live images and you were not allowed access to the security site in which only authorized personnel are permitted. Both actions would have resulted in a breach of safety and security.

Ms. Swindell advised you on April 23, 2012 of the security systems limitations. On June 27, 2012, you submitted a second request to the Commissioners despite already being informed of said limitations. After continuing correspondence with you regarding the issue, Ms. Swindell forwarded your request to the Commissioners, who are her direct supervisors. During that time it was discovered that a multiplexer was not working and the surveillance footage that was requested no longer existed. During that period of time, Ms. Swindell was not made aware of any security concerns by you or anyone else, nor was there any improper or illegal activity reported.

Ms. Swindell was out of the country from July 20, 2012 through August 9, 2012. Upon return, she was informed that was a misunderstanding between Mr. Shine and county security staff regarding the automatic recycled images. The system allows you to enter a date to retrieve prior footage. During this time, the images displayed on the monitor default to the current footage. The security staff misinformed Mr. Shine on this

issue. County I.T. staff reviewed the system and determined that the images displayed on the monitor were current while the date requested was being reviewed. Upon entering the date, the system will either provide the ability to record the data, as long as the multiplexer is properly functioning or display a prompt that indicates that the data was not available, which means that the footage has been recycled.

Commissioner Owens advised that your April 23, 2012 request sought recordings that did not contain any improper or illegal activity. The Government Center surveillance system is very antiquated. The request was received after the recording in question was automatically recycled. As you are an elected official that works in the Government Center, you knew or should have know the request could not be fulfilled. As to your June 27, 2012 request, the request was also for routine surveillance recordings that did not contain any improper or illegal activity. The cost of making the requested copies was \$640.00 and you declined to pay the cost. The recording were later automatically recycled.

### 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 Commissioners are 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 Commissioners’ 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).

As an initial matter, I.C. § 5-14-5-7 provides that a person that chooses to file a formal complaint with the counselor must file the complaint not later than thirty days after the denial or the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice. Your initial request for records was denied by the Commissioners on April 23, 2012. Your formal complaint was not filed with our office until August 9, 2012. Therefore, you would have standing to file a formal complaint in regards to your April 23, 2012 denial. However, you are entitled to make an informal inquiry about the state's public access laws. The substance of your formal complaint addressing your April 23, 2012 request will be addressed as an informal inquiry. *See* I.C. § 5-14-4-10(5).

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 twenty-four 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 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.

A “public record” is defined as any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. *See* I.C. § 5-14-3-2(n). There is no dispute that the surveillance footage is a “public record” pursuant to the APRA.

The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). A public agency shall further take precautions that protect the contents of public records from unauthorized access, unauthorized access by electronic device, or alteration. *See* I.C. § 5-14-3-7(b). The parties do not dispute that the applicable retention schedule, GEN 10-43, requires that that routine surveillance footage may be destroyed after thirty days if no improper or illegal activity is captured on the recording. Further, it has also not been alleged that any improper or illegal activity has occurred.

On April 23, 2012, you submitted a written request for surveillance footage from April 4, 2012. On April 23, 2012, Ms. Swindell advised that the recordings were no longer available and the footage had already been recycled. As the recordings are required to be kept for a period of thirty days prior to destruction, it is my opinion that the Commissioners acted contrary to I.C. § 5-14-3-4(e) and I.C. § 5-14-3-7(a) in allowing the footage to be recycled prior to the culmination of the thirty-day time retention period. While I do acknowledge and sympathize with the Commissioners in regards to the limits of the surveillance system that is currently utilized, the cost prohibitions of purchasing new equipment, and the responsibility of county security staff to ensure the safety and security of the Government Center, the requirements of the retention schedule that is applicable to the recordings cannot be ignored.

As to your June 27, 2012 request, the culmination of the responses to your formal complaint provide that the Commissioners, but for the discovery that a multiplexer had failed, had every intent to provide footage from June 25-27, 2012. As a result of the malfunctioning multiplexer, the footage was not retained and/or was already recycled. Immediately upon discovery of the malfunction, you were informed by Mr. Shine that the Commissioners were unable to fulfill your request. As provided *supra*, it is my opinion that the Commissioners acted contrary to the APRA by failing to comply with the requirements of I.C. § 5-14-3-4(e) and I.C. § 5-14-3-7(a) as to your June 27, 2012 request.

## CONCLUSION

Based on the foregoing, it is my opinion that the Commissioners acted contrary to I.C. 5-14-3-4(e) and I.C. § 5-14-3-7(a) in response to your request for surveillance footage.

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: Shawn Swindell, Gerald Shine, Steffanie Owens