



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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April 30, 2012

Gregory P. Yeary  
DOC 169399  
1946 W. U.S. 40  
Greencastle, Indiana 46135

*Re: Formal Complaint 12-FC-96; Alleged Violation of the Access to Public Records Act by the Ohio County Sheriff's Department*

Dear Mr. Yeary:

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

## BACKGROUND

In your formal complaint, you allege that on or about March 22, 2012, you submitted a written public records request to the Department. As of April 13, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Department has failed to respond to your request in any fashion.

In response to your formal complaint, the Department provided that you should contact the Rising Sun Police Department for any records that would be responsive to your request as that agency handled all the arrest and criminal charges for the individuals that you 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).

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. As the Department in its response to your formal complaint has not challenged your assertion that it failed to respond to your request within seven days of its receipt, it is my opinion that it acted contrary to the requirements of section 9 of the APRA.

As to the substance of your request, generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy...”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. In response to your formal complaint, the Department advised that you should contact the Rising Sun Police Department for any records that would be responsive to your request as that agency handled all the arrest and criminal charges for the individuals that you requested. If the Department did not have any records that were responsive to your request, it did not violate the APRA by failing to produce records that it did not maintain.



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## 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 for records within seven (7) days of its receipt. As to all other issues, it is my opinion that if the Department did not have any records that were responsive to your request, then it did not violate the APRA by failing to produce records that it did not maintain.

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: Ohio County Sheriff's Department