



STATE OF INDIANA

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May 20, 2013

Mr. Craig A. Campbell
1138 W Morning Walk Drive
Greenfield, Indiana 46140-8080

Re: Formal Complaint 13-FC-121; Alleged Violation of the Access to Public Records Act by the Floyd County Sheriff's Department

Dear Mr. Campbell:

This advisory opinion is in response to your formal complaint alleging the Floyd County Sheriff's Department ("Department") 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 Department on April 19, 2013. The Department's response was due no later than May 10, 2013. As of today's date, we have yet to receive a response from the Department.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Department on April 9, 2013. You sought records related to the arrest(s) and detention of Mr. Aaron L. Martin for burglary and sexual misconduct with a minor. Along with your request, you provided Mr. Martin's full name, date of birth, race, sex, home address, Department of Corrections Identification Number, and Sex Offender Registry Number. On April 17, 2013, you spoke with a representative from the Department regarding your request. You explained that you had not received any response from the Department within seven (7) days of its receipt. You were informed that the request was denied as you did not provide the proper identifying characteristics, specifically Mr. Martin's social security number. You further note that you never have received a written denial in response to your written request.

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 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). The seven-day time period for the Department to respond to a request pursuant to I.C. § 5-14-3-9(b) does commence until the date the Department receives the request. 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). Here, you provide that your written request was submitted to the Department on April 9, 2013; thus a written response from the Department was due no later than April 17, 2013. 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. The Department never issued a written response to your request and ultimately orally denied your written request. As such, it is my opinion that the Department violated section 9 of the APRA in response to your request by failing to respond in writing and by orally denying a written request.

The APRA requires that a records request "identify with reasonable particularity the record being requested." I.C. § 5-14-3-3(a)(1). "Reasonable particularity" is not defined in the APRA, but the public access counselor has repeatedly opined that "when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity." *See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88; 13-FC-36*. It is my opinion that the Department violated section 3(a) of the APRA by denying your request due to its belief that it was not made with reasonable particularity.

As to the substance of your request, you sought information pursuant to section 5 of the APRA regarding the arrest and detention of Mr. Martin for burglary and arrest. The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. In this regard, information must be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. *Id.* I.C. § 5-14-3-5(a) provides that if a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
 - (A) time and location of the arrest or the issuance of the summons;
 - (B) investigating or arresting officer (other than an undercover officer or agency); and
 - (C) investigating or arresting law enforcement agency.

If a person is received in a jail or lock-up, I.C. § 5-14-3-5(b) provides that the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person is being held.
- (3) The time and date that the person was received and time and date of the person's discharge or transfer.
- (4) The amount of the person's bail or bond, if it has been fixed.

Finally, I.C. § 5-14-3-5(c) obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The following information must be maintained in the daily log:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and
 - (D) a general description of any injuries, property, or weapons involved.

Counselor Neal provided the following guidance regarding a law enforcement agency's requirements pursuant to I.C. § 5-14-3-5(c):

In some instances, a law enforcement agency will not maintain a separate record titled "daily log" but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log information, the agency will generally provide copies of incident reports. In some cases, the agency will

redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying. *Opinion of the Public Access Counselor 09-FC-93.*

The Department provided that you failed to provide the appropriate identifying parameters that would allow it to search its records for details regarding Mr. Martin's arrests. The Indiana Court of Appeals recently addressed a similar request regarding reasonable particularity and section 5 of the APRA in *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012):

In support of its cross-motion for summary judgment, the FWPD asserted that it could not fulfill any part of Jent's records request because the request does not comply with Indiana Code Section 5-14-3-3(a)(1), which requires that the request "identify with reasonable particularity the record being requested." The "reasonable particularity" requirement under this statute has not previously been interpreted by an Indiana court. In the context of the discovery rules, however, a requested item has been designated with "reasonable particularity" if the request enables the subpoenaed party to identify what is sought and enables the trial court to determine whether there has been sufficient compliance with the request. *In re WTHR-TV*, 692 N.E.2d 1, 6 (Ind. 1998). Here, in essence, the FWPD contends that Jent's request fails the first part of that test, namely, that it does not enable the FWPD to identify the records sought.

Again, Jent requested the following records:

Daily incident report logs of crimes committed from January 1st, 2001[,] through December 8th, 2005[,] containing the crimes of abduction and sexual assault and/or attempted abduction and attempted sexual assault with the victims describing the perpetrator as a[n] Hispanic male with a tattoo of a rose and green stem on the left arm or side and/or if the victim was taken to a[n] abandoned house and/or placed in a van during the commission of the crime.

Appellee's App. at 15. While Jent's request describes the records sought in some detail, the level of detail does not necessarily satisfy the "reasonable particularity" requirement of the statute. In response to a request under APRA, a public agency is required to search for, locate, and retrieve records. Depending upon the storage medium, the details provided by the

person making the request may or may not enable the agency to locate the records sought. Indeed, here, the FWPD was unable to fulfill the request using the search parameters Jent provided.

As Sergeant Bubb explained in response to Jent's request, the records are maintained electronically and the "software will not facilitate the production of any kind of list with the parameters [Jent] specified." *Id.* at 17. The FWPD designated Sergeant Bubb's letter as evidence in support of summary judgment. That designated evidence shows that the parameters given in the request are incompatible with the software that manages the electronic data. In other words, the software lacks the capacity to search and retrieve the records requested.

In support of his summary judgment motion, Jent designated as evidence the PAC's advisory opinion. In that opinion, the PAC observed that "incident reports" and "daily logs" might be separate records and that "incident reports are considered investigatory records," which "may be withheld from disclosure at the discretion of the agency." *Id.* at 33 (citing Ind. Code § 5-14-3-4(b)(1)). But the PAC stated that the daily logs must be disclosed under APRA. Further, the PAC stated that "it would not be appropriate for the [FWPD] to deny [Jent] access to the information on the basis that it is stored in a way that would not allow the [FWPD] to separate the daily log information from the discretionary investigatory record information." Appellant's App. at 35 (emphasis added).

The PAC misconstrues Sergeant Bubb's letter. The letter does not deny Jent's request based on an alleged inability to separate the daily logs from other documents. Rather, the letter gives two other reasons for denying Jent's request: that the FWPD was unable to search its records using the parameters given and that the records requested are excepted from disclosure as investigatory records. The PAC did not express any opinion concerning whether the FWPD's software had the capacity to locate and retrieve the records using the parameters Jent provided.

In short, without designated evidence to the contrary, there is no factual basis to question Sergeant Bubb's statement that the records requested cannot be located or retrieved using the search parameters provided by Jent. Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records. Here, the undisputed designated evidence shows that such is not the case and that the FWPD is entitled to summary judgment. *Jent*, 973 N.E.2d at 33-35.

The Department has provided that it is unable to locate records responsive to your request without Mr. Martin's social security number. You provided with your formal

complaint a copy of the Department's form that you submitted to receive information pursuant to section 5 of the APRA for Mr. Martin. From my review of the information you provided, I was able to determine the following identifying factors for Mr. Martin: his full name, home address, date of birth, sex, race, height, weight, hair color, eye color, Department of Corrections Identification Number, Sex Offender Registry Number, a prior cause number that Mr. Martin was convicted from Floyd County, and note that your request was limited to Mr. Martin's alleged prior arrests for burglary and sexual misconduct with a minor. You were unable to provide Mr. Martin's social security number; although this would be highly difficult in light of the fact that social security numbers are confidential pursuant to state law. *See* I.C. § 5-14-3-4(a)(12). Without the benefit of a written response to your original request and to your formal complaint that was filed, it is difficult for me to determine why the Department believed that your request was not made with reasonable particularity. As to the facts presented here, it is my opinion that your request was made with reasonable particularity in light of the breadth of identifying factors that were provided.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department violated section 9 of the APRA by failing to respond in writing to your written request within seven days of receipt and by orally denying your written request. It is further my opinion that the Department violated section 3(a) of the APRA by denying your request in light of its belief that it was not made with reasonable particularity. Lastly, it is my opinion that your request was made with reasonable particularity in light of the breadth of identifying factors that were provided with the request.

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: Floyd County Sheriff's Department