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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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CHRIS E. HARKINS,  
*Complainant,*

v.

DEARBORN COUNTY SHERIFF'S DEPT.,  
*Respondent.*

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Formal Complaint No.  
17-FC-177

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Dearborn County Sheriff's Department ("Sheriff" or "Department") violated the Access to Public Records Act<sup>1</sup> ("APRA"). Dearborn County Sheriff Michael Kreinhop responded by letter to the complaint on July 24, 2017. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 20, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## BACKGROUND

Chris E. Harkins (“Complainant”) filed a formal complaint alleging that the Sheriff violated the Access to Public Records Act by wrongfully denying him access to certain records. Essentially, the Complainant—who is incarcerated—argues that the Sheriff wrongfully denied him access to public records under the Act by requiring him to appear at the Dearborn County Law Enforcement Center to inspect the requested records.

In a letter dated June 30, 2017, Harkins requested the following from the Sheriff:

The visitor log demonstrating the date and time, including duration when possible, of the times N. Alan Miller, III, Public Defender for Dearborn County visited Chris E. Harkins during his confinement at DCLEC between August 1, 2014 until January 1, 2015; and

In addition...copies of the visitor log which demonstrates or tracks the times N. Allan Miller visited incarcerated individuals at the DCLEC from August 1 2014 until January 1 2015.

Five days later, the Sheriff issued a letter in response to Harkins’ request. There, the Sheriff stated—in relevant part—the following:

In response to both requests, the Sheriff’s Department is under no obligation to compile data and deliver those records to you, please see IC 5-14-3-3(b). The Public Records Law requires only that records be made available for inspection and copying upon payment of a statutorily authorized fee amount...

Pursuant to statute, you or your representatives are welcome to appear at the Dearborn County Law Enforcement Center and inspect the requested information during normal business hours...

As a result, Harkins filed a formal complaint with this office against the Sheriff alleging a violation of the APRA.

The Sheriff denies that a violation has occurred in this case; and, concludes that APRA does not specifically require a public agency to mail records in response to a public records request. Although the Sheriff does not dispute Harkins' narrative of events, he contends that the Department followed APRA in accordance with Ind. Code §§ 5-14-3-3(f) and (a).

What is more, the Sheriff argues that in compliance with Ind. Code § 5-14-3-3(b), he did not deny Harkins' request, rather he invited Harkins *or his representatives* to appear at the Department to inspect the requested records.

### **ANALYSIS**

At the heart of this case is a dispute about whether a public agency has a duty under the APRA to mail responsive records to a requestor or simply allow the requestor to search and inspect the records.

As set out *supra*, the Sheriff argues that his Department is under no obligation to compile and deliver—i.e. *mail*—responsive records to the Complainant; and therefore, the Department need only make the responsive records available for inspection and copying by the Complainant or his representatives upon payment of a statutory authorized fee amount during normal business hours.

The Access to Public Records Act (“APRA”) expressly acknowledges the public policy of the State of Indiana is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.<sup>2</sup>

Toward that end, providing the people 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.<sup>3</sup> The Dearborn County Sheriff’s Department is a public agency subject to APRA. *See* Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the Sheriff’s public records during regular business hours unless the records are not subject to disclosure under APRA’s mandatory or discretionary exemptions. *See* Ind. Code §§ 5-14-3-4(a) and (b).

The plain language of APRA expressly provides:

Within a reasonable time after the request is received by the agency, the public agency shall either: (1) provide the requested copies to the person making the request; or (2) allow the person to make copies: (A) on the agency’s own equipment; or (B) on the person own equipment.<sup>4</sup>

Strictly construed, that language does not—as urged by the Sheriff—require a public agency to compile and send records through US postal mail, email, fax, or otherwise deliver the documents at taxpayer expense. The defect in that argument

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<sup>2</sup> Ind. Code § 5-14-3-1.

<sup>3</sup> *Id.*

<sup>4</sup> Ind. Code § 5-14-3-3(b).

is that APRA must be *liberally construed*, not strictly construed. *See* Ind. Code § 5-14-3-1.

Despite the Act's silence on whether the word *provide* includes mailing, I still believe best practice would entail advising the requestor of the cost of postage and mailing the records anyway.

The spirit of the APRA, in my view, is to allow access to everyone no matter where or how they are situated. Public agencies routinely receive requests from out-of-state and mail the responsive records—as a courtesy—and recoup costs by collecting the actual cost of postage.

In some cases, as the Sheriff suggests, to *provide* a record may amount to merely making the record available for inspection and copying. Some individuals, however, lack the ability to inspect and copy records at an agency's place of business—i.e., inmates, shut-ins, out-of-state requestors—and may require a heightened level of service from the agency. I encourage agencies to consistently use sound judgment and mail responsive records whenever possible.

Plainly enough, it seems, an inmate at maximum security correctional facility has no ability—and perhaps rightfully so—to personally appear at the Dearborn County Law Enforcement Center to inspect and copy the records as the Sheriff requires. It is true, that the Sheriff invited the Complainant or his *representatives* to appear at DCLEC to inspect and copy the records. Because he expressly invited the Complainant's representatives to appear, the Sheriff claims that he has not denied the request.

Ironically, the Sheriff's argument on that point falls in on itself if one applies the Sheriff's own logic. As the Sheriff sees it, he has no obligation to mail the requested records to the Complainant because *nowhere in Ind. Code § 5-14-3-3 does it require public records to be compiled and sent via US postal mail, email, fax, or otherwise delivered at taxpayer expense.*

Notably, nowhere in APRA does it require prison inmates to send a representative to appear in person in order to access the public records of a public agency. Instead, the statute expressly states that it is the public policy of the state that *all persons are entitled to full and complete information regarding the affairs of government...* See Ind. Code § 5-14-3-1.

What is more, the Complainant did not request the records at the expense of the taxpayer. He, in fact, asked for the total number of pages and total costs for copying prior to making the copies.

Lastly, the Sheriff does not dispute that the records requested by the Complainant are indeed public records under APRA. He does not argue that the records are confidential or otherwise exempt from disclosure under APRA. He does not claim that Harkins' request lacked reasonable particularity or otherwise challenge its sufficiency. Instead, the Sheriff chooses to adhere to a strict construction of the APRA's language, which stands in tension with the legislature's stated intent that APRA is to be *liberally construed*. There is no indication a list must be created – a log is not a list – and if the information exists in a form that can be provided, it should be provided.

What is more, I disagree with any blanket assertion that mailing records is burdensome and creates undue hardship.

This very well may be the case in some situations; however, it is the fundamental duty of public agencies to provide information upon request. It may not be the Sheriff's duty to be an inmate's research assistant, but it is his obligation to provide as much access as possible under the law. This duty expressly includes not denying or interfering with the exercise of the right to inspect and copy the agency's records.

Mailing is a reasonable method of providing information—especially where personal appearance is impossible—even if it is not specifically mandated by the APRA. Again, I implore agencies to evaluate the circumstances on a case-by-case basis in a light most favorable to transparency.

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that Dearborn County Sheriff violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor