

August 15, 2002

Mr. Mark Rutherford, Attorney  
Libertarian Party of Bartholomew County, Indiana  
156 East Market Street, Suite 600  
Indianapolis, IN 46204

*Re: Advisory Opinion 02-FC-32; Alleged Denial of Access to Public Records by the Clifford Police Department.*

Dear Mr. Rutherford:

This is in response to your formal complaint, which was received on July 19, 2002. You have alleged that the Clifford Police Department ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you requested copies of public records related to citations issued for operating a vehicle without wearing a seat belt restraint from the Department and that the Department refused to provide them. Mr. Thomas Mote, attorney for the Town of Clifford, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that since the Department does not maintain records of citations written, the refusal to provide these records did not constitute a denial under the APRA.

## BACKGROUND

According to your complaint, on June 27, 2002, you sent via certified mail to the Department a request for copies of public records relating to citations issued for violations of Indiana Code section 9-19-10-2, operating a vehicle without wearing a seatbelt restraint. You asked for the names, addresses, dates of citation and places of citation for every person issued such a citation by the Department between the dates of May 19 and June 2, 2002. The certified mail return receipt indicates that Town Marshal Charles received your request. Marshal DeWeese telephoned you on July 1, 2002 and advised you that he refused to produce the requested records without a court order. You then filed your formal complaint with this Office.

In response to your complaint, I received a telephone message from Marshal DeWeese on August 6, 2002 advising me that he believed this was a misunderstanding between the parties. Marshal DeWeese indicated that what he had advised you was that if you wanted access to these public records you could look at the Bartholomew County Clerk's Office. In his written response, Mr. Mote agreed that the citations you are seeking are disclosable public records, but that the Department does not maintain copies of the citations or statistics related to them. Since the Department does not have these public records, Mr. Mote suggested that you contact the Bartholomew County Clerk's Office, which does maintain these public records.

## 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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

A "public record" is defined as "any writing, paper, report . . . that is created, received, retained, maintained, used or filed by or with a public agency." Ind. Code §5-14-3-2. The Department is clearly a public agency for the purposes of the APRA. Id. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). If a public agency receives a written request for access to public records any denial must be in writing and include the specific statutory exemption that supports that denial. Ind. Code §5-14-3-9(c). Denials of access are actionable in the circuit or superior court in which the denial took place under Indiana Code section 5-14-3-9.

In your request to the Department, you asked for copies of citations issued for operating a vehicle without wearing a seat belt restraint by the Department during a certain time frame. It is my opinion that the citations you requested are disclosable under the APRA and that there is no statutory exemption that appears to make them confidential or disclosable at the discretion of the Department.

According to your complaint, Marshal DeWeese told you over the telephone that he would not produce the requested citations without a court order. In his telephone message to me, Marshal DeWeese stated that you could find these records in the County Clerk's Office. Mr. Mote further clarified that the Department does not maintain the citations or any statistics related to them. It is understandable, given Marshal DeWeese's statement to you that you would believe that the Department has these records since he implied you needed a court order to obtain them. It is my opinion, however, that if a public agency does not maintain the public records requested, it is not a denial of access under the APRA to fail to provide them upon request. For this reason, it is my opinion that you were not denied access to public records by the Department because the records you requested are not maintained by that public agency.

On a final note, I would suggest that in the future, if the Department receives a request for public records that are not maintained by them, the response should be clear to the requestor. If Marshal DeWeese had advised you of this in his telephone call of July 1, 2002, you may not have found it necessary to file this formal complaint.

## CONCLUSION

It is my opinion that the Clifford Police Department did not deny you access to public records in response to your June 27, 2002 request because the Department does not maintain the public records you requested.

Sincerely,

Anne Mullin O'Connor

cc: Marshal Charlie DeWeese, CPD