



STATE OF INDIANA

MIKE BRAUN, Governor

**PUBLIC ACCESS COUNSELOR
JENNIFER RUBY**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Email: pac@opac.in.gov
Website: www.IN.gov/pac

December 30, 2025

Re: Complaint 25-FC-067
Christina M. Whitfield (Complainant) v.
Warrick County Prosecutor's Office (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed March 31, 2025.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on October 14, 2025, requesting a formal response by November 12, 2025. A formal response, submitted by Prosecuting Attorney Michael J. Perry on behalf of Respondent, was received in this office on November 18, 2025.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide a copy of records requested related to an investigation.

ANALYSIS

The public policy of 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.” Indiana Code (IC) 5-14-3-1.

Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14-3-3(a).

Complainant filed a request for copies of public records on March 12, 2025. The request sought a copy of investigation reports, summaries or updates, police reports, information regarding the status of the investigation, copies of correspondence between the Respondent and law enforcement agencies and documentation of notification to Complainant or her daughter regarding the case. Respondent submitted a letter to Complainant on March 24, 2025,

responding to the request. Respondent stated that the office was not in possession of any investigatory reports, summaries, or updates relating to the case including any written correspondence.

Respondent states in its response dated November 18, 2025, that the request for information submitted by Complainant would result in the invasion of the attorney work product exception to disclosure. This formal response is quite different from the earlier response provided to Complainant in March.

The March response hinges on the position that the Respondent did not have any of the records that were being requested. This office has opined on numerous occasions that a public agency is not required to produce records it does not have nor is it required to create records it does not have in its possession.

In Respondent's formal response it takes a position that the records are work product of an attorney and would divulge the decisions on whether to charge or not charge potential defendants. It is unclear as to whether Respondent had records it was choosing not to disclose or did not have records it could not disclose, or a combination of both, at the time of Complainant's request.

APRA contains exceptions-both mandatory and discretionary-to the general rule of disclosure. APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. IC 5-14-3-4(a).

APRA lists other types of records that may be excepted from disclosure at the discretion of the public agency. IC 5-14-3-4(b). The "...work product of an attorney representing, pursuant to state employment or an appointment by a public agency: (A) a public agency; (B) the state; or (C) an individual." Clearly Respondent is an employee of a public agency, the county, and had within Respondent's discretion the option to claim the exception for work product provided by an attorney. IC 1-5-14-3-4(b)(2).

However, APRA requires a public agency, when denying a request to disclose records, to make the denial in writing, and to include a statement of the specific exception or exemption authorizing the withholding of the records and the name and title of the individual responsible for the denial. IC 5-14-3-9(d). If Respondent chose to invoke the work product exception to exclude certain records from disclosure it failed to follow the guidelines set forth in the statute by not specifically identifying the statutory exemption it was claiming.

Respondent further states: "Since this was a matter for which charges were not filed, all materials relating to this matter were destroyed, as is the practice of this office. It should be noted that any reports, tests, etc. are preserved in the

computerized RMS records of the Warrick County Sheriff's Office (of which Ms. Myers filed an APRA on the Sheriff to retrieve – response unknown)."

As was discussed in *Opinion of the Public Access Counselor 25-FC-104*:

IC 35-38-9-1(b) requires that "all records related to the criminal charges" be ordered expunged where a court dismisses criminal charges filed and pending against a person. Further,

IC 35-38-9-10 (i) An expungement case, and all documents filed in the case, becomes confidential when the court issues an expungement order....

Related: APRA at IC 5-14-3-4(a)(1), says:

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

Although it appears the records would be excepted from APRA for confidentiality, here it appears that Respondent's practice to adhere to this is to destroy all documentation related to dismissed criminal cases. This would mean that Respondent may no longer have had any of the physical records requested by Complainant.

CONCLUSION

This office finds that the Respondent may have violated APRA by failing to cite the specific exemption in its denial for nondisclosure of the requested records. However, as it appears that one or more valid exceptions apply, Respondent did not violate APRA by not providing the requested records.



Jennifer G. Ruby
Public Access Counselor