



STATE OF INDIANA

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July 14, 2009

David Grupenhoff
PO Box 756
Nashville, Indiana 47448

Re: Formal Complaint 09-FC-148; Alleged Violation of the Access to Public Records Act by the Brown County Sheriff's Department

Dear Mr. Grupenhoff:

This advisory opinion is in response to your formal complaint alleging the Brown County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Department's response to the complaint is enclosed for your reference. It is my opinion the Department has not violated the APRA.

BACKGROUND

You allege that on June 1, 2009 you delivered a request for access to records to the Department. You requested a copy of the Department rules and regulations. On June 2 you received a response from the Sheriff wherein the Sheriff indicated further review and response would be provided by the Department's attorney, A. Howard Williams. On June 3 you received a letter from Mr. Williams. The June 3 letter did not contain a statement of denial of access but indicated it was a preliminary response and that a detailed response would follow. You filed the present complaint on June 23, alleging you have received no further communication after the June 3 letter.

The Department responded to the complaint by letter dated July 9 from Mr. Williams. The Department contends that on June 23 Mr. Williams sent a letter to you indicating a heavy litigation calendar and a conference delayed his follow-up response to you. The Department contends it did not violate the APRA because it initially responded to the request within the statutorily mandated time period.

Regarding the record you have requested, the Department contends there is no specific record entitled "Brown County Sheriff's Department Rules and Regulations." The Department further contends that the broad category of records your request might encompass includes records that are nondisclosable for a number of reasons.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 the APRA. I.C. § 5-14-3-3(a).

A request for access to records may be oral or written. 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 to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a). This office has said twenty-four hours means twenty-four business hours, or by the same time the next day. *See Opinion of the Public Access Counselor 00-FC-28.*

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Department received your request on June 1, and the Department sent a response to you on June 1. This response was made within the time period mandated by the APRA. I.C. § 5-14-3-9(a). The Department then provided a subsequent response approximately three weeks later. You filed the complaint on June 23, which is apparently the same day the subsequent response was provided. The Department contends the subsequent response was delayed three weeks due to the heavy workload of Mr. Williams. In my opinion, three weeks is a reasonable amount of time to consider your request and provide a subsequent response to your request.

There is no bright line distinction between what is and is not reasonable. If, for instance, you had requested access to a copy of a specific document which was disclosable in its entirety and about which the Department had no questions, three weeks might not be reasonable. Here, though, the Department needed Mr. Williams to review the request and any records which might be responsive in order to provide an appropriate response. It is my opinion the Department did not take an unreasonable amount of time to provide this subsequent response.

Regarding the substance of the request, the Department contends the request does not identify with reasonable particularity the record(s) being requested. The APRA requires that a request for access to records “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1).

“Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. Ct. App. 1991). “Particularity,” as used in the APRA, is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

Here, the Department contends there is no single record entitled or which could be classified as “Brown County Sheriff’s Department Rules and Regulations.” The Department contends that any number of records containing rules and regulations could fall under this description. And regarding those different records, a number of exceptions to disclosure might apply. I do not address those exceptions, as those exceptions are not at issue here. I do agree, though, that the request fails to identify with reasonable particularity the record being requested. While the APRA contains no definition for reasonable particularity, it is my opinion the provision means that an agency must be able to determine from the request which specific record(s) is/are being requested. In my opinion, the Department has demonstrated it cannot ascertain which specific record(s) you seek. I would advise you to re-submit your request and in doing so identify which specific records you seek.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: A. Howard Williams
Sheriff Robert “Buck” Stogsdill