



STATE OF INDIANA

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March 16, 2009

Clay Howard
DOC #112612
PO Box A
New Castle, Indiana 47362

Re: Formal Complaint 09-FC-55; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Probation Department

Dear Mr. Howard:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Probation Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of 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 January 12, 2009 you submitted a request for access to the records maintained by the Department. Specifically, you requested a list of name and mailing address of all adult female individuals currently on probation in the county. The Department denied you access to the records. Your complaint was postmarked on February 10, and my office received it on February 13.

The Department responded to the complaint by letter dated February 19. The Department contends it does not maintain the list you have requested and is not required to create such a list. Further the Department contends that information maintained by the Department, which includes client names and addresses, is confidential pursuant to I.C. § 35-38-1-13 and I.C. § 11-13-1-8.

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).

You have requested a list of names and mailing addresses of individuals on probation in Tippecanoe County. The Department indicates it does not maintain such a list. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, the Department is not required to create a list responsive to your request.

Further, any records deemed confidential by state statute may not be disclosed absent a state or federal law requiring disclosure or order of a court under the rules of discovery. See I.C. § 5-14-3-4(a)(1). The Department has cited two statutory provisions, I.C. § 35-38-1-13 and I.C. § 11-13-1-8, which declare confidential the records containing the information you seek. Because state statute declares those records confidential, the Department may not provide the information to you absent a state or federal law requiring disclosure or order of a court.

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: David Luhman, Hoffman, Luhman & Masson, PC
Kipp A. Scott, Tippecanoe County Probation Department