



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 20, 2011

Mr. Delmas Sexton II
417 South Calhoun St.
Fort Wayne, IN 46802

Re: Formal Complaint 11-FC-24; Alleged Violation of the Access to Public Records Act by the Allen County Sheriff's Department

Dear Mr. Sexton:

This advisory opinion is in response to your formal complaint alleging the Allen County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Department's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Department denied you access to a copy of your initial booking detail into the Allen County Jail. You submitted your request on January 1, 2011. On January 4th, the Department denied your request on the basis that the record is not a public record after an inmate's release from the jail. You argue that the record is public regardless of an inmate's status.

In response to your complaint, Capt. Ron Rayl of the Department states that the Department is unsure about what specific records you seek. However, as of January 13th, the Department supplied you with computer booking records for incarcerations on April 3, 2009, and April 9, 2010.

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." I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, it appears the Department replied to your written request in a timely manner.

Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). The Department denied your request, but did not cite to a provision in the APRA or another law that required or allowed the Department to withhold the records you requested. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Department has not provided a justification for withholding the records at issue here, it is my opinion that the Department has failed to sustain its burden. It is my understanding that the Department has now provided you with responsive records. I trust this satisfies your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department has not sustained its burden of proof to demonstrate that it had a legal basis to withhold the records you requested. Because the Department has now released the relevant records, it has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Capt. Ron Rayl