

February 4, 2008

Johnathan Sandlin
c/o John Emry
62 West Jefferson Street
Franklin, Indiana 46131

Re: Formal Complaint 08-FC-28; Alleged Violation of the Access to Public Records Act by the Switzerland County Sheriff

Dear Mr. Sandlin:

This advisory opinion is in response to your formal complaint alleging the Switzerland County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Sheriff has violated the Access to Public Records Act.

BACKGROUND

In your complaint you allege that you requested from the Sheriff incident or police reports for law enforcement activity at the Switzerland County High School for August 24, 2005 and September 28, 2005 in addition to other reports from the years 2002 to 2005 if any such records exist. You sent the request to the Sheriff on December 19 and provide a copy of the return receipt indicating the Sheriff received the request on December 21. You allege you have not received a response from the Sheriff. You filed this complaint on January 4.

The Sheriff did not respond to your complaint at my invitation to do so.

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. Any person has the right to inspect and copy the public records of a public agency 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).

The Sheriff is clearly 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 public records of the Sheriff 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).

Investigatory records of law enforcement agencies shall be excepted from disclosure at the discretion of the public agency. I.C. §5-14-3-4(b)(1). "Investigatory record" means information compiled during the course of the investigation of a crime. I.C. §5-14-3-2(h).

Certain records of law enforcement agencies, though, must be disclosed: information relating to arrest and summons, information relating to a person received in jail or lock-up, and daily log information. I.C. §5-14-3-5. The daily log that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (1) The time, substance and location of all complaints or requests for assistance.
- (2) The time and nature of agency's response to all complaints or requests for assistance.
- (3) If the incident involves and alleged crime or infraction:
 - (A) The time, date and location of the occurrence;
 - (B) The name and age of any victim, unless it's a victim under Ind. Code 35-42-4;
 - (C) The factual circumstances surrounding the incident; and
 - (D) A general description of any injuries, property, or weapons involved.

This information must be made available for inspection and copying. The record must be created no later than 24 hours after the suspected crime. I.C. §5-14-3-5(c).

If the records you have requested from the Sheriff are not investigatory records and/or fall into one of the categories of records required to be disclosed pursuant to I.C. §5-14-3-5, the Sheriff must disclose the records. Nothing the APRA requires a requester to obtain a subpoena or engage legal counsel to obtain access to public records.

If the Sheriff denies access to the records and your request was made in writing, the denial must be made in writing and must contain the specific statutory authority allowing or requiring nondisclosure and an indication of the name and title of the person responsible for the denial. I.C. §5-14-3-9(c).

CONCLUSION

For the foregoing reasons, it is my opinion the Sheriff has violated the APRA by denying you access to public records.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Sheriff Nathan Hughes