



# STATE OF INDIANA

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August 12, 2011

Mr. Clay Howard  
DOC # 112612  
5501 S. 1100 W  
Westville, Indiana 46381

*Re: Formal Complaint 11-FC-193; Alleged Violation of the Access to Public Records Act by the Shelby County Sheriff's Department*

Dear Mr. Howard:

This advisory opinion is in response to your formal complaint alleging the Shelby 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 you submitted a request in writing for six individual "book-in" reports for individuals who had been previously taken into custody at the Shelby County Jail. Specifically you requested the name, book-in photo, and addresses of the individuals. The Department responded to your request and provided you pay a \$.20 copy fee before the records would be released. You submitted the payment for \$.20 on June 24, 2011 and allege that you have never received any further response from the Department.

In response to your complaint, the Department advised that they mailed the records to you on July 14, 2011 and enclosed a file-stamped copy of the envelope that the records were sent in.

## 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." See I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. See 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. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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 within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). 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, the Department responded to your initial request within the timeframes required by the APRA. The Department provided that you pay a \$.20 copy fee before the records would be released. The APRA permits a public agency to charge a fee for copies of public records. *See* I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. *See* I.C. § 5-14-3-8(e).

After providing the Department with the copy fee, you allege that you have never received the records responsive to your request. The Department advised that they mailed the records to you on July 14, 2011 and provided a file stamped copy of the envelope that the records were sent in. It is unclear why you have not received a copy of the records. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. If the Department failed to send the records responsive to your request after receiving payment, they acted contrary to the APRA. If the Department did send the records, they did not violate the APRA.

I would advise you to follow up with the staff at the Wabash Valley Correctional Facility regarding the receipt of the records. If you are still unable to locate the records or confirm their delivery at the facility, you should request an additional copy of the records from the Department. Generally, the APRA does not require public agencies to provide multiple copies of the same record. *See Opinion of the Public Access Counselor 01-FC-07; 05-FC-94; 11-FC-58*. I would ask that the Department provide you with an additional copy of the records should you indicate to them that you never received its initial response. The Department would be permitted to charge you for the additional copies pursuant to I.C. § 5-14-3-8.

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Department failed to send the records responsive to your request, they acted contrary to the APRA. If, however, the Department did send the record, it did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Michael Bowlby