



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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November 17, 2015

Mr. Michael B. Smith - ##160731
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 15-FC-269; Alleged Violation of the Access to Public Records Act by the Brown County Sheriff's Office

Dear Mr. Smith,

This advisory opinion is in response to your formal complaint alleging the Brown County Sheriff's Office ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Office responded via Mr. Scott Southerland, Sheriff. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 5, 2015.

BACKGROUND

Your complaint dated September 28, 2015 alleges the Brown County Sheriff's Office violated the Access to Public Records Act by not providing access to the requested documents.

On August 13, 2015, you sent the Office a request for documents related to a cause number, including photographs, search warrants and lists of items held by the Office related to the case. On August 21, 2015 the Office acknowledged your request. On September 17, 2015 your request was denied. Sheriff Southerland informed you the Office was exercising its investigatory discretion under the APRA. You were also informed the Office had no evidence related to the cause number.

On October 19, 2015 the Office reiterated its denial citing the investigatory records exemption.



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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 Ind. Code § 5-14-3-1. The Brown County Sheriff’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The Office relies on the Ind. Code 5-14-3-4(b)(1), which permits law enforcement records to withhold investigatory materials. The Brown County Sheriff’s Office is considered a law enforcement agency and therefore has the discretion to withhold documents. The only point of exception I would take from the Sheriff’s letter is the statement that search warrants and its return are investigatory. During the service process, they are law enforcement records and therefore investigatory, however, once they are served and placed in the court file, they lose investigatory status. Court records, unless sealed by a judge under very limited, specific circumstances, are open to the public under both the APRA and Administrative Court Rule 9. That being said, the Sheriff maintains the warrants are no longer in the custody of the Department and you would need to submit your request to the court with jurisdiction over your case.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that Brown County Sheriff’s Office has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor



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Cc: Mr. Scott Southerland, Sheriff