

Indiana's Public Access Laws

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Access to Public Records Act Basics

- “Providing persons with the 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.”
- The full text of APRA can be found at Ind. Code 5-14-3.

Access to Public Records Act Basics

- ❑ “Public records” are broadly defined: can be summarized as “any material that is created, received, retained, maintained or filed by or with a public agency.” I.C. § 5-14-3-2(n).
- ❑ The Indiana Court of Appeals has added to this definition any material created *for or on behalf of* a public agency. *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1137 (Ind. Ct. App. 2005).

Access to Public Records Act Basics

- “Copy” includes photocopying as well as making a digital copy using a digital camera or a hand-held scanner.

- “Inspect” includes the right to make notes, abstracts and memoranda, or to listen to an audiotape.

Access to Public Records Act Basics

- ❑ The agency may require a person to submit a request for a public record in writing, on or in a form supplied by the agency. I.C. § 5-14-3-3(a).
- ❑ The agency shall either make the requested copy or allow the person to make a copy on the agency's equipment or on the person's own equipment.

Access to Public Records Act Basics

- ❑ An agency must make reasonable efforts to provide a copy of electronic data to a person if the medium requested is compatible with the agency's system.
- ❑ If a record contains disclosable and nondisclosable information, the agency shall separate the disclosable material and make it available. I.C. § 5-14-3-6.

Use of Technology

□ Electronic Mail

- Any record, including electronic media, created received, retained, maintained, or filed by or with a public agency is a public record.
- Therefore, electronic mail is a public record if it is created, received, retained, maintained, or filed with a public agency, including a governing body.

Use of Technology

- ❑ Electronic mail must be available for inspection and copying by the governing body unless an exception to disclosure, based on the content of the email, applies.

- ❑ Electronic mail must be maintained in accordance with records retention schedules, pursuant to I.C. 5-15.

Use of Technology

- Email messages maintained in a personal email account (e.g. Yahoo! account) are generally not public record.
- If the personal email is submitted to the agency, it becomes a public record.
 - Example: A council member prints a personal email message from a neighbor and gives it to a city employee for follow-up.

Access to Public Records Act Basics

□ Public Agency's Responsibility

- Respond to requests made in person or via telephone within 24 hours of receipt.
- Respond to mailed, faxed, or e-mailed requests within seven days of receipt.
- Respond in writing to written requests for records; best practice is to respond to all requests in writing.
- Responding is not necessarily producing the record.

Access to Public Records Act Basics

- Agency's Responsibility, continued
 - If denying records, state reason for denial with citation to authority, and give name and title or position of person responsible for denial. I.C. § 5-14-3-9.
 - Produce records in reasonable time; communication with requestor is key.

Access to Public Records Act Basics

- Exemptions to disclosure (I.C. § 5-14-3-4)
 - Section 4(a) categories are confidential
 - Declared confidential by state statute
 - Required to be kept confidential by federal law
 - Patient medical records created by a provider
 - Declared confidential by rule adopted by Indiana supreme court (Admin. Rule 9)

Access to Public Records Act Basics

- Section 4(b) are discretionary categories
 - Investigatory records of law enforcement
 - Records compiled during the course of the investigation of a crime
 - Personnel file information, except for certain information that must be disclosed
 - Telephone number and address of a complainant in the records of a law enforcement agency
 - If address of complainant is address of reported incident, address must be disclosed
 - Name of complainant must be disclosed

Access to Public Records Act Basics

- Certain law enforcement agency information must be made available for inspection and copying. I.C. § 5-14-3-5.
 - Arrest, summons, jail, and lock-up information
 - A daily log that lists certain information about suspected crimes, accidents or complaints

Access to Public Records Act Basics

□ Fees

- Local agencies may charge only the fee schedule adopted by the fiscal body of the agency and authorized by I.C. § 5-14-3-8.
- May not exceed the *actual cost* for providing a copy of the public record.
- *Actual cost* is the cost of the paper and per page cost for use of the equipment; does not include labor and overhead.

Access to Public Records Act Basics

Fees, continued

- APRA's general provisions regarding fees are superseded by a specific statute allowing higher fee.
 - Example: Motor vehicle accident reports

- Agencies may require advance payment.

Access to Public Records Act Basics

□ Retention of records

- The APRA requires an agency to protect records from loss, alteration, mutilation, or destruction.
- Each county has a commission on public records to adopt retention schedules. The state oversight committee on public records has set general retention schedules for cities and towns. More information can be found at www.in.gov/icpr/county/coretention.

APRA and ODL

Enforcement Provisions

- ❑ A person may file a complaint with the public access counselor alleging a denial of a right under APRA or ODL.
- ❑ The PAC sends formal complaint to the agency for response and issues a formal advisory opinion within 30 days.
- ❑ A person may file a lawsuit in superior court to compel the agency to produce a record or declare an action void.

APRA and ODL Enforcement Provisions

- If a person prevails in court and has received an advisory opinion from the Public Access Counselor prior to going to court, the person *shall* be awarded reasonable attorney's fees, court costs, and other reasonable costs of litigation.

Office of the Public Access Counselor

- Our contact information
 - 402 West Washington Street, W470
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 - Fax: 317.233.3091
 - Toll free: 800.228.6013
 - Phone: 317.234.0906

- Visit our website at www.in.gov/pac for the *Handbook on Indiana's Public Access Laws*, advisory opinions, and other resources.

PUBLIC ACCESS TO JUVENILE RECORDS

General Rules

- Generally, the Access to Public Records Act (“APRA”) (Indiana Code 5-14-3) provides that all records maintained by a public agency are public records, but some records may be confidential or disclosable at the discretion of the public agency. All records which do not fall into the statutory exceptions must be made available for public inspection and copying. I.C. § 5-14-3-3.
- The APRA is a general statute; any specific statutes regarding access to specific records supersede the APRA. Several Indiana Code sections, described in the foregoing sections, contain provisions related to access to juvenile records.
- An agency cannot declare records confidential absent statutory authority or rulemaking authority specifically allowing the agency to classify records confidential. I.C. § 5-14-3-4(a)(2).
- The agency may not deny access because the person refuses to state the purpose of the request, unless the agency can deny access on the basis of a statutory limitation on to whom or for what purpose the record may be disclosed. I.C. § 5-14-3-3(a).
- If a public record is partially disclosable, the public agency must separate or redact the nondisclosable material and disclose the rest of the record. I.C. § 5-14-3-6(a).
- An agency may not disclose a social security number contained in the records of a public agency. I.C. § 5-14-3-4(a)(12).
- For the purposes of juvenile records, a child is someone who is younger than eighteen years of age. I.C. § 31-9-2-13.

Juvenile Delinquency Records

- When a juvenile is alleged to have committed an act that would have been a crime if committed by an adult, the following information contained in the records is accessible to the public:
 - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved
 - The identity of any victim
 - A description of the method of apprehension
 - Any instrument of physical force used
 - The identity of any officers assigned to the investigation, except for the undercover units
 - The age and sex of any child apprehended or sought for the alleged commission of the offense
 - The identity of a child, if the child is apprehended or sought for the alleged commission of an offense over which a juvenile court does not have jurisdictionI.C. § 31-39-3-2.
- Records relating to the detention of a child in a secure facility shall be open to public inspection. I.C. § 31-39-3-3.
 - If the secure facility falls under the jurisdiction of a court, the records relating to the detention are not law enforcement records. I.C. § 31-39-3-3 would not apply in that case. Instead, I.C. 31-39-1

and I.C. 31-39-2, which govern access to juvenile court records, would apply. *Opinion of the Public Access Counselor 07-FC-231.*

- All law enforcement records related to juvenile delinquencies which are not listed above are confidential. I.C. § 31-39-3-4.
 - Under I.C. 31-39-4, the records can be released to certain people involved with juvenile court, including judges and the parties to a proceeding.

Juvenile Court Records

- Generally, juvenile court records are confidential. I.C. § 31-39-1-2; *see also* Ind. Admin. Rule 9(G)(1)(b)(vi).
- The following types of juvenile court records are confidential: chronological case summaries; index entries; summonses; warrants; petitions; orders; and motions. However, this rule does not apply to records “involving an adult charged with a crime or criminal contempt of court” or a “pregnant minor or her physician seeking . . . written consent of the minor’s parent or guardian.” I.C. §§ 31-39-1-1 and 2.
- Pursuant to I.C. 31-39-2, confidential records can be released to certain people involved with juvenile court, including judges and the parties to a proceeding. I.C. § 31-39-1-2.

Child Abuse and Neglect Investigations

- A report of child abuse or neglect made pursuant to I.C. 31-33 (or I.C. 31-6-11 before its repeal) is confidential. Records related to those reports are also confidential if they are maintained by the Indiana Family and Social Services Administration, its division of family resources, or a county office.
- Child abuse and neglect records must be available to people or agencies listed in I.C. § 31-33-18-2. The list includes people “about whom a report has been made.” In such an instance, the identities of people who reported actual or suspected abuse or neglect must be protected. I.C. § 31-33-18-2(14); *see Opinion of the Public Access Counselor 06-FC-194.*

School Records

- Under the APRA, public records declared confidential by federal law may not be disclosed unless access to the records is specifically required by a state or federal statute or order of a court under the rules of discovery. I.C. § 5-14-3-4(a)(3).
- The Indiana Court of Appeals has held that the Federal Education Rights and Privacy Act of 1974 (“FERPA”) (20 U.S.C. § 1232g; 34 C.F.R. § 99) requires education records to be kept confidential under the APRA. *An Unincorporated Operating Div. of Indiana Newspapers, Inc. v. The Trs. of Indiana Univ.*, 787 N.E.2d 893, 904 (Ind. Ct. App. 2003).
- The public access counselor’s office has prepared a fact sheet regarding public access to school records. It can be found at www.in.gov/pac under the “Resources” section.

PUBLIC ACCESS TO WARRANTS AND MUG SHOTS

GENERAL RULES

- The Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) defines a public record as any record a public agency maintains; the definition specifically includes photographs. *See* I.C. § 5-14-3-2(n).
- Some public records may be confidential or disclosable at the discretion of the public agency. *See* I.C. § 5-14-3-4. All records which are not excepted from disclosure must be made available for public inspection and copying. I.C. § 5-14-3-3.
- An agency cannot declare records confidential absent statutory authority or rulemaking authority allowing the agency to classify records confidential. I.C. § 5-14-3-4(a)(2).
- If an agency does not maintain records a person requests, the agency does not violate the APRA by not providing those records. *Opinion of the Public Access Counselor 05-FC-255*.

WARRANTS

- An agency may not disclose records the Indiana Supreme Court declares confidential (through its Administrative Rules) unless a state or federal statute or a court order requires access to the records. I.C. § 5-14-3-4(a)(8).
- Indiana Supreme Court Administrative Rule 9 declares arrest warrants and search warrants confidential *only if* an agency has yet to serve them **and** *only if* a trial judge has ordered them to be kept confidential. Ind. Admin. R. 9(G)(1)(b)(x), *cited in Opinion of the Public Access Counselor 04-FC-36*.

MUG SHOTS

- A law enforcement agency generally has the discretion to withhold investigatory records. *See* I.C. § 5-14-3-4(b)(1). Investigatory records contain information compiled during the investigation of a crime. I.C. § 5-14-3-2(h).
- A mug shot does not necessarily fall under the investigatory records exemption. Instead, an agency must present specific facts to prove that the record falls under the exemption. *See* I.C. § 5-14-3-9(f)-(g).
- An agency cannot use the investigatory records exemption to arbitrarily deny release of a mug shot. *See* I.C. § I.C. 5-14-3-9(g)(2). Therefore, an agency should establish a consistent policy regarding the release of mug shots.