

August 20, 2007

Tyrone Frazier
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-217; Alleged Violation of the Access to Public Records Act by the Indianapolis-Marion County Forensic Services Agency

Dear Mr. Frazier:

This is in response to your formal complaint alleging the Indianapolis-Marion County Forensic Services Agency ("Agency") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by failing to respond to your request for records. A copy of the Agency's response to your complaint is enclosed. I find that the Indianapolis-Marion County Forensic Services Agency did not violate the APRA.

BACKGROUND

In your complaint you allege that you requested from the Agency a copy of the contract or agreement the Agency has with the Indiana legislature or the Marion County Prosecuting Attorney's Office regarding DNA testing for criminal cases. You filed your complaint on July 20 alleging the Agency had not responded to your request.

The Agency responded to your complaint on July 23 with a copy of its July 11 response to your request. In the July 11 response to you, the Agency indicated it received your request on July 9 and did not have any records responsive to your request because no such contract exists.

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. 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 Agency 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 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).

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 days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

Here the Agency received your request on July 9 and responded on July 11, well within the seven days allowed under the APRA. The Agency indicated no records responsive to your request exist because there is no such contract. An Agency cannot produce records that do not exist.

CONCLUSION

For the foregoing reasons, I find that the Indianapolis-Marion County Forensic Services Agency did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Michael M. Medler, Indianapolis-Marion County Forensic Services Agency