

September 4, 2007

Lawrence Newman  
6007 Hillside Avenue East Drive  
Indianapolis, Indiana 46220

*Re: Formal Complaint 07-FC-231; Alleged Violation of the Access to Public Records Act by the Marion County Juvenile Detention Center*

Dear Mr. Newman:

This is in response to your formal complaint alleging the Marion County Juvenile Detention Center ("MCJDC") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. A copy of the MCJDC's response is enclosed for your reference. I find that the MCJDC's denial of access to the records you requested was appropriate under the APRA.

#### BACKGROUND

In your complaint you allege that on July 9, 2007 you requested records from the MCJDC. Specifically you requested records of a particular person. You indicated you requested the documents pursuant to Ind. Code §31-39-3-3, which provides that records relating to the detention of any child in a secure facility shall be open to public inspection. You filed your complaint with this office on August 2, alleging the MCJDC has not responded to your request.

The MCJDC responded to your complaint by letter dated August 21 from Lauren Toppen, Public Access Counselor and Assistant Corporation Counsel for the City of Indianapolis. Ms. Toppen submits that I.C. §31-39-3-3 pertains to juvenile law enforcement records. Since the MCJDC falls under the jurisdiction of the Marion Superior Court, Juvenile Division, its records are declared confidential under I.C. §31-39-1-2. Ms. Toppen further indicates that at the time of your July 9 request the Court had already issued an order denying you access to the records. Ms. Toppen also sent you a denial of access in writing dated August 20. In addition, Ms. Toppen provided copies of court orders from March 1 and August 14 denying you access.

## 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." Ind. Code §5-14-3-1. The MCJDC 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 MCJDC 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 "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

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). A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.<sup>1</sup>

Records declared confidential by state statute are excepted from disclosure. I.C. §5-14-3-4(a). Juvenile court records subject to I.C. §31-39-1 are declared confidential and are available only in accordance with I.C. §31-39-1-2.

Here you requested records regarding a juvenile from the MCJDC, claiming they are public record under I.C. §31-39-3-3. This provision, however, applies to juvenile law enforcement records. The MCJDC falls under the jurisdiction of the Marion Superior Court, Juvenile Division, which is not a law enforcement agency for the purposes of the APRA. I.C. §5-14-3-2(l)(6). Records of the MCJDC therefore fall under the confidentiality requirements of I.C. §31-39-1-2. Records declared confidential by state statute are excepted from disclosure under the APRA. I.C. §5-14-3-4(a).

Regarding MCJDC's response to your request, since this request has been at issue for several months as evidenced by the Marion Superior Court, Juvenile Division's Order of March 1, 2007 denying you access to records, it is not clear to me that the August 20 written denial for the July 9 request was the initial response. If it were the first response, it would be untimely under the APRA. But I cannot definitively ascertain whether it was untimely.

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<sup>1</sup> Previous Public Access Counselors have opined that the 24 hour response required by the APRA means 24 business hours. Like other previous counselors, I initially interpreted that to mean 24 hours of operation, or roughly three business days. I understand now that the first Public Access Counselor, Counselor O'Connor, interpreted 24 hours as the next business day. I subscribe to the interpretation. This means a public agency must respond to a request submitted orally by the same time the next business day.

## CONCLUSION

For the foregoing reasons, I find that the MCJDC's denial of access to the records you requested was appropriate under the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Lauren Toppen, Assistant Corporation Counsel, City of Indianapolis