

September 5, 2007

Richard Corbin
DOC #975153
PO Box 30
Pendleton, Indiana 46064

Re: Formal Complaint 07-FC-237; Alleged Violation of the Access to Public Records Act by the Department of Homeland Security

Dear Mr. Corbin:

This is in response to your formal complaint alleging the Indiana Department of Homeland Security ("Department") 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 Department's response is enclosed for your reference. I find that the Department did not violate the APRA by not responding to a request it did not receive.

BACKGROUND

You allege that you submitted a request to the Department dated June 25, 2007 for records pertaining to the citizenship of an employee with the Indiana Department of Correction. You submitted your complaint on July 17, and I received it on August 7, alleging the Department did not respond to your request.

In response to your complaint, Pam Bright of the Department indicated she does not recall having received the request. Further, had she received the request, she would have responded that the Department does not maintain the records you request but that you might seek such from the State Personnel Department.

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 Department 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 Department

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 Department indicates it did not receive your request for records. If the Department did receive your request, it would have a duty under the APRA to respond within seven days of receipt even if the records requested are not maintained by the Department. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Department did not receive your request, it did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, I find that the Department did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Pam Bright, Department of Homeland Security