

October 24, 2007

Robert Shumaker
4790 East Twinflower Place
Tucson, Arizona 85706

Re: Formal Complaint 07-FC-300; Alleged Violation of the Access to Public Records Act by the Randolph County Department of Health

Dear Mr. Shumaker:

This is in response to your formal complaint alleging the Randolph County Health Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. The Department's response is enclosed for your reference. It is my opinion the Department did not violate the APRA because the Department has provided you with the requested records.

BACKGROUND

You allege that you have submitted requests to the Department on October 7, 2006; January 22, 2007; April 18, 2007; June 26, 2007 and September 7, 2007 for copies of records. You allege that as of September 24 you have received no response. You mailed your complaint on September 24, and my office received it on October 1.

The Department responded to your complaint by letter from Dr. J.M. Leahey dated October 15. Dr. Leahey contends the Department has sent you the requested records on two occasions and did so by certified mail on the second occasion. Dr. Leahey further indicates he will direct his staff to again send the records to you via certified mail.

ANALYSIS

The public policy of the APRA states, "(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, the agency must respond to the request within seven days of receipt. I.C. §5-14-3-9(b).

If a person is entitled to a copy of a public record under this chapter and the public agency has reasonable access to a machine capable of reproducing the public record, the public agency must provide at least one copy of the public record to the person. I.C. §5-14-3-8(e).

A person who chooses to file a complaint with the public access counselor must file the complaint not later than thirty days after the denial. I.C. §5-14-5-7(a). Here your complaint involves several requests for records. Your complaint is untimely regarding all requests except the September 7 request. My opinion would be the same regarding those previous requests, though, as it is regarding the September 7 request.

The Department asserts it has received your request and sent you the records you requested on two different occasions, sending the records by certified mail the second time. I assume the Department can bear the burden of proving the mailing by certified mail. The Department is required to send you one copy of the requested records. I.C. §5-14-3-8(e). It is my opinion the Department has fulfilled its duty under the APRA regarding your request.

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Dr. J.M. Leahey, Randolph County Health Department