

February 25, 2008

Roy Smith  
DOC #6274  
PO Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 08-FC-47; Alleged Violation of the Access to Public Records Act by Indianapolis Metropolitan Police Department*

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of IMPD's response to your complaint for your reference. It is my opinion IMPD has not violated the APRA.

#### BACKGROUND

You allege that you submitted a request to IMPD dated December 25, 2007. Specifically, you requested records related to any disciplinary actions taken against a certain officer. Receiving no response, you sent this complaint on January 23, 2008; I received it January 25.

IMPD responded to your complaint by letter dated February 15 from City of Indianapolis Assistant Corporation Counsel Lauren Toppen. Ms. Toppen indicates IMPD received your request on January 14. IMPD searched its records and determined it does not maintain any records related to any disciplinary actions taken against the officer. Further, IMPD indicates that it is not the correct agency for court records and suggests you direct your request related to court records to a specific court or clerk of court.

#### 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. IMPD 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 IMPD 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 IMPD received your request on January 14. It is unclear whether IMPD responded to you within seven days of receipt of the request or responded to you by way of its response to the complaint by letter dated February 15. If IMPD did not mail its response by January 21, its response was untimely under the APRA.

The Department indicated it does not maintain the records you request and as such has no records responsive to your request. Since a public agency cannot produce records that do not exist, the Department did not violate the APRA by not providing records.

#### CONCLUSION

For the foregoing reasons, it is my opinion IMPD's response may have been untimely under the APRA if it was not sent within seven days of receipt of the request, but IMPD has not otherwise violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Lauren Toppen, Assistant Corporation Counsel