



STATE OF INDIANA

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August 9, 2010

Mr. Brad Harris
Miami Correctional Facility
3038 West 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 10-FC-159; Alleged Violation of the Access to Public Records Act by the Wayne County Sheriff's Department

Dear Mr. Harris:

This advisory opinion is in response to your formal complaint alleging the Wayne County Sheriff's Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the Department's response is enclosed for your reference.

BACKGROUND

According to your complaint, you wrote to the Department on June 17, 2010, to request access to a police report. You claim that the Department's administrative assistant refuses to "reply" to you due to the fact that you are incarcerated. You further allege that you require access to the record you requested for a court hearing.

My office forwarded a copy of your complaints to the Department. In response, the Department copied my office on a letter that it sent to you on or about July 7th. In that letter, the Department informed you that you are "welcome to appear at the sheriff's office during regular business hours to inspect the records addressed in your request." The letter further stated that the law does not require an agency to mail, fax, or otherwise transmit data to a requester.

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." I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. I.C. § 5-14-3-

2(m). Accordingly, any person has the right to inspect and copy the Department's public records 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Thus, if the Department failed to either respond to your written request within the required seven (7) days or send you a written denial, the Sheriff violated the procedural requirements of section 9 of the APRA.

However, the Department has informed you that you or your representative may inspect and copy the records you requested during normal business hours. I agree with the Department that nothing in the APRA requires the Department to mail you copies of records at its expense. The APRA permits a public agency to charge a fee for copies of public records. I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copy fee in advance. I.C. § 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated section 9 of the APRA if it did not respond to your written request within seven (7) days, but the Department did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Sheriff Strittmatter