



STATE OF INDIANA

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February 16, 2010

Mr. Greg D. Sobin
DOC # 113650
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 10-FC-20; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Mr. Sobin:

This advisory opinion is in response to your formal complaint alleging that the Fort Wayne Police Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

BACKGROUND

This complaint relates to a previous complaint you filed with this office: 09-FC-227. In response to that complaint, the Department assured this office on October 21, 2009, that it would provide you with certain arrest records that are disclosable under I.C. § 5-14-3-5 "in a timely manner." As of January 8, 2010, when you submitted this second complaint, you had not yet received those records.

My office forwarded a copy of your second complaint to the Department. In response, the Department forwarded you the relevant records on January 26, 2010, and copied my office on that correspondence.

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." I.C. § 5-14-3-1. The Department does not contest that it is 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 exempt from disclosure as confidential or otherwise nondisclosable

under the APRA. I.C. § 5-14-3-3(a). The burden of proof for nondisclosure of a public record is on the public agency that would deny access to the record. I.C. § 5-14-3-1.

Regarding the Department's delay in producing your requested records from October 21, 2009, to January 26, 2010, there are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Because the Department has not provided an explanation as to why it took over three months to produce the arrest records to you, it is my opinion that the Department has failed to show that its delay was reasonable.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department has not shown that the time it took to produce records to you was reasonable.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Carol Taylor, City of Fort Wayne