



STATE OF INDIANA

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October 25, 2010

Mr. Joseph W. Barr
3038 W. 850 S.
Bunker Hill, IN 46914

Re: Formal Complaint 10-FC-224; Alleged Violation of the Access to Public Records Act by the Kendallville Police Department

Dear Mr. Barr:

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

BACKGROUND

In your complaint, you allege that on August 23, 2010, you requested various records from the KPD. As of September 20th, you had not received a response.

In response, KPD Chief of Police Robyn A. Wiley states that the KPD has already provided you with all records responsive to your request. Specifically, you obtained the records from the KPD through your attorney during the discovery phase of your trial for methamphetamine-related charges. On September 17th, the KPD sent a letter to you informing you of the KPD's view that you have already received the records.

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 KPD 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 KPD's public records during regular business hours unless the 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). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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. Here, if the KPD failed to respond to your written request within the required seven (7) days, the KPD violated subsection 9(b) of the APRA.

With regard to the substance of your request, the APRA does not require public agencies to provide multiple copies of the same record to a requester. In 2005, Counselor Davis issued an opinion under circumstances and reached the same conclusion:

Although under Indiana Code section 5-14-3-8(e), a public agency must provide at least one copy of a public record to a person, there is no requirement that a public agency provide multiple copies to the same person. According to the Department, you have already been provided a copy of the tape that you continue to request. You apparently sent the tape to the Court in furtherance of your appeal. Nevertheless, the Department is not obligated to provide multiple copies of a public record to you so long as one copy has been provided. Accordingly, it is my opinion that since you have already obtained from the Department a copy of the tape, the Department's decision not to provide additional copies to you was not a denial under the APRA. *See Opinion of the Public Access Counselor 01-FC-07.*

See Opinion of the Public Access Counselor 05-FC-194. Because I agree with Counselor Davis' reasoning, it is my opinion that the KPD did not violate the APRA by refusing to provide you with another copy of the responsive records.

CONCLUSION

For the foregoing reasons, it is my opinion that the KPD's response to your request was untimely under the APRA, but the KPD did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Chief Robyn Wiley