



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 30, 2011

Mr. Troy L. Shields
Westville Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 11-FC-133; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department

Dear Mr. Shields:

This advisory opinion is in response to your formal complaint alleging the Lake County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Department, but as of today we have not received a response.

BACKGROUND

In your complaint, you allege that the Department violated the APRA by denying you access to Department records regarding certain individuals. In response to your request, the Department sent you a letter that stated, "after a diligent search of our files, we find that [certain named individuals and an address] have no record, incident reports and/or police runs with the Lake County Sheriff's Department." You claim that it is not possible that the Department does not have responsive information because you know of certain incidents that occurred in the 1990s.

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" under the APRA. I.C. § 5-14-3-2. 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 under the APRA. I.C. § 5-14-3-3(a).

If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

It is possible that the Department once maintained the records you requested but no longer does. The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. See I.C. § 5-14-3-4(e). As long as the records you seek were disposed of in accordance with an applicable retention schedule, the Department did not violate the APRA by failing to maintain them beyond the retention period.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if the Department has no records responsive to your request, provided that if the records were destroyed the Department disposed of them in accordance with an applicable retention schedule.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Sheriff John Buncich