



STATE OF INDIANA

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August 29, 2011

Mr. Scottie R. Edwards
3038 W 850 S
Bunker Hill, Indiana 46914

Re: Formal Complaint 11-FC-191; Alleged Violation of the Access to Public Records Act by the Indianapolis Department of Public Safety

Dear Mr. Edwards:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Department of Public Safety ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Assistant Corporation Counsel, Mark A. Mertz, responded on behalf of the City. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on July 21, 2011 you submitted a written request to the Department for any and all records concerning your arrest by then Lt. Douglas Scheffel, IMPD on February 2, 2001 in the 1200 block of East 96th Street. You further requested information regarding your vehicle that was towed by Indy Towing from the East 96th Street location. As of August 5, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, the Department had not responded to your request.

In response to your formal complaint, Ms. Martz advised that the Department did not receive your request. The Department provided that you made a substantially similar request of another city agency, the Metropolitan Emergency Communications Agency ("MECA"), on March 28, 2011. On April 6, 2011, MECA provided all documents that were responsive to your request. As such, anticipating your future request, the Department will provide to you any documents responsive to your request that have come into its possession since April 6, 2011.

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.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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.

The Department maintains that it did not receive a request from you. If the Department did not receive your request, it was not obligated to respond to it. As previous Public Access Counselor’s have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Department received your request. Under the APRA, if a 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. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Department did receive your request and did not respond to it within these timeframes, the Department violated the requirements of section 9(c) of the APRA.

I trust that the Department will respond to your request in accordance with the APRA. If you want to ensure that your request reaches the Department in the future, I would advise you to send it via certified-mail or make arrangements to have your request hand-delivered. I would also note for any future records requests that you plan to make of the Department or any other agency under the City’s purview, the APRA does not require public agencies to provide multiple copies of the same record to a requester. *See Opinion of the Public Access Counselor 11-FC-58*.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Department did not respond to your written request within seven (7) days of receiving it, it violated the APRA. However, if the Department never received your request, then it did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Mark A. Mertz