



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 18, 2012

Paul –A: Graber
117 4B Road
Nappanee, Indiana 46550

Re: Formal Complaint 12-FC-182; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Graber:

This advisory opinion is in response to your formal complaint alleging Indiana State Police (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Lt. Mark Carnell, General Counsel, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have made a series of requests to the Department to obtain copies of the bond and oath information for certain police officers. In response to your request, the Department advised that Department personnel are not required to be bonded, thus there is no document that can be provided in response to your request. As to your request for oaths, the Department does not retain an official copy of the oaths taken at the State Police Academy graduation.

In response to your formal complaint, Lt. Carnell advised that the Department does not maintain any records that are responsive to your request. Department troopers’ law enforcement authority is valid upon “appointment” by the Superintendent after the applicant has completed specified training, as per I.C. § 10-11-2-12. No oath is mentioned in that chapter of the Indiana Code, and there is no statutory requirement for an individual to take an oath before appointment as trooper. As a matter of custom, a Justice of the Supreme Court of Indiana administers an oath to each graduating class of ISP recruits, and a signed copy of the oath is provided to each new trooper. As the oath is not required for appointment, the Department does not maintain a copy for each trooper. As to the bond request, I.C. § 10-11-2 imposes no requirement for state police officers to provide a bond or otherwise be bonded before or after appointment. As such, the Department cannot provide a record that it does not maintain.

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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

Generally, 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...”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. As applicable here, the Department has advised that the records that you are seeking are not maintained by the agency, nor are they required by law to be maintained by it. As such, it is my opinion that the Department did not violate the APRA by failing to produce a record that it does not maintain or required by law to maintain.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Lt. Mark Carnell