



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

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

September 13, 2012

Marquis D. Shipp
DOC 963441
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-238; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Shipp:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department (“IMPD”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the IMPD. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the IMPD on or about July 15, 2012. As of August 20, 2012, the date you filed your formal complaint with the Public Access Counselor’s Office, you further allege that the IMPD has failed to respond to your request.

In response to your formal complaint, Ms. Newsom advised that the IMPD has no record of receiving your request. However, now being duly advised of your request, the IMPD has commenced a search for any records that are responsive and you will be notified when said records are available.

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 IMPD 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 IMPD’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).

The IMPD maintains that it did not receive a request from you. 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 IMPD 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 IMPD received your request and did not respond to it within these timeframes, it acted contrary to the APRA. However, if the IMPD did not receive your request, it was not obligated to respond to it.

As the IMPD is now aware of your request and has commenced the process of searching for any records that may be responsive, I trust that this is in satisfaction of your formal complaint. If you want to ensure that your request reaches the IMPD in the future, you may consider sending the request via certified mail or making arrangements for your request to be hand-delivered.

CONCLUSION

For the foregoing reasons, it is my opinion that the IMPD did not violate the APRA if it never received your request for records.

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: Andrea Brandes Newsom