



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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April 17, 2012

Kenny Green
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 12-FC-78; Alleged Violation of the Access to Public Records Act by the Marion County Jail II

Dear Mr. Green:

This advisory opinion is in response to your formal complaint alleging the Marion County Jail II ("Jail") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Dianna Baker Shew, Assistant General Counsel, responded on behalf of the Jail. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have submitted multiple written requests to the Jail for a copy of your attorney's visitation records. As of March 27, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Jail.

In response to your formal complaint, Ms. Shew advised that the Jail has never received a written request for records from you. Upon receiving your formal complaint, the records responsive to your request were compiled and provided to you.

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 Jail 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 Jail'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 Jail maintains that it did not receive your request. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Jail 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 Jail received your request and did not respond to it within these timeframes, the Jail violated section 9 of the APRA. However, if the Jail did not receive your request, it was not obligated to respond to it. Regardless, the Jail has advised that upon receipt of your formal complaint, it compiled and provided to you all records that were responsive to your request; which I trust is in satisfaction of your complaint.

CONCLUSION

Based on the foregoing, it is my opinion that the Jail did not violate the APRA if it never received your written request.

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: Dianna Baker Shew