



STATE OF INDIANA

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August 23, 2013

Mr. John M. Powell
DOC 955836
3038 West 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 13-FC-228; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department

Dear Mr. Powell:

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"), Ind. Code § 5-14-3-1 *et seq.* John P. Bushemi, Attorney, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that you submitted a written request for records to the Department on July 15, 2013. As of August 5, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that the Department has failed to respond to your request in any fashion.

In response to your formal complaint, Mr. Bushemi advised that the Department has no record of receiving your request for records. As the Department is now aware of your request, it has responded in writing. The Department has advised that it does not maintain the visitation and medical records you have requested from 1994-95.

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).

The Department 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 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 received your request and did not respond to it within these timeframes, the Department acted contrary to the APRA. However, if the Department did not receive your request, it was not obligated to respond to them. Regardless, the Department has now responded to your request, in writing, and advised that it does not maintain the visitation and medical records you had requested from 1994-1995. The Department would not violate the APRA by failing to provide a record that it is not legally required to maintain.

CONCLUSION

Based on the foregoing reasons, it is my opinion the Department did not violate the APRA if it never received your request.

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 distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: John P. Bushemi