



STATE OF INDIANA

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September 17, 2013

Mr. Mark Richmond
DOC #113932
Indiana State Prison
1 Park Row
Michigan City, IN 46360

Re: Formal Complaint 13-FC-243; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department

Dear Mr. Richmond,

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, Esq., responded on behalf of the Department. His response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 19, 2013.

BACKGROUND

Your complaint alleges that the Lake County Sheriff's Department violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

On August 1, 2013, you executed a Request for Public Access to Public Record letter requesting Attorney Visitation Records during your stay at the Lake County Jail. According to the postage date on the envelope provided by Mr. Bushemi, your letter was mailed on August 5, 2013. The request was marked as received on August 13, 2013 and a response was sent back to you dated August 14, 2013 advising you the records were being processed for disclosure. Your formal complaint dated August 13, 2013 was received by this office on August 19, 2013.

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 Ind. Code § 5-14-3-1. The Lake County Sheriff’s Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Your letter was received by the Department on August 13, 2013. The response by the Department through Department Counsel was dated August 14, 2013 although; it is not clear when the response was placed in the mail. Your contention was the response was sent to you outside the time limitations pursuant to Ind. Code § 5-14-3-9(b) and is deemed denied.

It is recognized by this Office that mail sent by offenders within the Department of Correction may take a certain amount of time to process. It is quite often the case inmate correspondence is not mailed on the actual date that is written on their enclosed post. It is clear the envelope in which you mailed your request was postmarked on August 5, 2013. It is therefore conceivable the letter did not make it through the postal process until August 6, 2013 or August 7, 2013. Even though the letter was marked as “received” by the Department on August 13, 2013, it is likely your request actually arrived before the August 13, 2013 date. Even if that was the case, August 14, 2013 is not beyond likelihood of the mail being received seven days prior.

Furthermore, the agency has a prescribed form (attached for your reference) indicating the specific address and department for a records request. While it is permissible for a public agency to adopt a form for public records requests (see Ind. Code § 5-14-3-3(a)(2)), nevertheless, the Department accepted your request and responded within a day of receiving your request. The delay in processing could very well be due to the request not written on the prescribed form.

This Office places the burden on the public agency to demonstrate why a request was denied and views the evidence in a light most favorable to the complainant. The Public Access Counselor is not a finder of fact, however, even in a light most favorable to you, it is determined your request was handled appropriately by the Department. Because a response was sent to you on August 14, 2013, I trust the matter has been resolved to your satisfaction and you were not prejudiced in any way by the perceived delay.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Lake County Sheriff's Department did not violate the APRA in responding to your request.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

cc: James P. Bushemi, Esq.