



STATE OF INDIANA

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September 19, 2013

Mr. Demetreous A. Brown, Sr.
F.C.I. Ashland
P.O. Box 6001
Ashland, KY 41105

Re: Formal Complaint 13-FC-247; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Brown:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Samantha DeWester, City Prosecutor and Public Access Counselor, responded in writing to your formal complaint. Her response is enclosed for your reference. Your request for priority status was not granted because it does not meet the criteria found in Title 62 of the Indiana Administrative Code.

BACKGROUND

In your formal complaint you indicated that on May 28 and 29, 2013 you mailed two separate written requests for records to the Department. A response from the Department dated June 5, 2013 acknowledged your May 28, 2013 request and began processing the records. The Department subsequently denied your request on August 21, 2013 and invited you to resubmit the request by indicating what you were seeking with more particularity. You sought the following records in the May 28, 2013 letter in electronic format:

1. Records, recordings, pictures, etc., surrounding the controlled purchase involving the requestor on September 9, 2004;
2. Records, recordings, pictures, etc., surrounding the circumstances which led up to and including the requestor's arrest of May 16, 2005;
3. Statements, affidavits, summaries, notes, etc., made for or against the requestor;
4. Telephonic records and recordings of the requestor;

5. Reports of evidentiary and/or scientific information findings;
6. Investigation and/or investigatory reports;
7. Final and closing investigation reports; and
8. Any other records not specifically requested above.

In the same letter on May 28, 2013 you further requested complete “paper” copies of:

1. Any rule, policy, and/or schedule, adopted in regards to accessing, storing, and/or retaining records in your agency;
2. The complaint procedures, remedies for violations and limitations period for judicial review (in the event any portion of this request is denied).

In your May 29, 2013 request you sought copies of the personnel files in regards to the two law enforcement officers. In response to your formal complaint, Ms. DeWester denied the department ever received the May 29, 2013 request until you filed your formal complaint with this Office. She indicated the records had been subsequently found and sent you a letter on August 28, 2013 stating responsive records had been found and were available after the remitting of copying fees.

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 twenty-four 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 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 information regarding how or when the agency intends to comply.

Acknowledgment of your request was provided on June 5, 2013 in a timely manner. On August 21, 2013, the records request was denied due to their determination the request was vague and not stated with reasonable particularity.

As to the timeliness of the denial, it is recognized the Department (and the City of Indianapolis, as a whole) receives a substantial amount of records requests. It is not unusual that requests are processed and the records are released 6-8 weeks after receipt of

the request. This is in contrast to local municipalities which may not receive as many requests. It is often the case that records sought pursuant to media deadlines or pending litigation are treated with priority. Nothing in the APRA suggests giving priority status to some requests at the discretion of a public agency which is contrary to the notions of fairness or transparency. That said, all records requests should be handled by any public agency in a timely and responsive manner. The Department should be mindful of the importance of responding to public records requests in a reasonable time. This could simply be in the form of a status update to the requestor. This was not done by the Department until nearly 90 days after the request was received. Although not explicitly stated in the APRA, it is strongly encouraged all public agencies give a status report to requestors during a particularly lengthy search period.

Regarding the denial, the reasonable particularity standard has been addressed by previous Public Access Counselors. As Counselor Hoage stated in *12-INF-13*:

“[W]hen a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *Ops. of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency; if an agency needs clarification of a request, the agency should contact the requestor for more information rather than simply denying the request. See generally *IC 5-14-3-1; Opinion of the Public Access Counselor 02-FC-13*.

I hereby adopt this reasoning and apply it to the present case. As stated above, although the response by the Department was not particularly timely, it acted in accordance with the above standard and asked for clarification of the request. This is reasonable under the APRA.

The Public Access Counselor is not a finder of fact, therefore I cannot state with authority the accuracy of the Department’s determination that the request was vague. It appears that part of your request is reasonably specific; however, the information you seek may likely be in the custody of a trial court. Other portions of the request do indeed appear broad and clarification may be necessary for the gathering of that particular information.

In regard to the May 29, 2013 request, the Department claims it was never received by the Department until your formal complaint was filed with this Office. Again, I am not a finder of fact, so I cannot make a determination whether your request was received. The Department has now acknowledged the request and has gathered the records for your review after payment is received pursuant to Ind. Code § 5-14-3-8 et. al. I trust that this response satisfies your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion the Department has acted contrary to the spirit of the APRA, by failing to respond to your May 28, 2013 request in a reasonable and timely manner. However, The Department acted appropriately in all other aspects pursuant to your request.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

cc: Samantha DeWester