



STATE OF INDIANA

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September 4, 2014

Mr. Gary Otto # 905901
Putnamville Correctional Facility
1946 West U.S. Highway 40
Greencastle, IN 46135

Re: Formal Complaint 14-FC-165 & 178 (consolidated); Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department and Marion County Community Corrections

Dear Mr. Otto,

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("IMPD") and the Marion County Community Corrections ("MCCC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department and Marion County Community Corrections have provided a response to your complaint via Ms. Samantha DeWester, City Prosecutor and Public Access Counselor. Her response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor.

BACKGROUND

Your complaint(s) allege the Indianapolis Metropolitan Police Department and Marion County Community Corrections violated the Access to Public Records Act by not providing records responsive to your requests in violation of Ind. Code § 5-14-3-3.

On May 29, 2014, you sent a request to IMPD seeking the "address, zip code and name of officer in charge of the Police Mentoring Program". Your request was timely acknowledged on June 5, 2014. Responsive records were not found until August 6, 2014 when it was discovered that the program to which you were referring was administered by the Indiana Department of Correction ("DOC"). Information was subsequently sent to you on or about August 28, 2014.

Your other complaint involves a public records request seeking information about weekly evaluations. The MCCC claims the request was never received. Furthermore, a letter was sent to you advising you of their availability and associated copying costs.

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 Indianapolis Metropolitan Police Department and the Marion County Community Corrections are public agencies 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 IMPD’s and MCCC’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 first request simply appears to have been served on the wrong party. The program you refer to is administered by the DOC. It is my expectation the DOC would have information responsive to your request. Please be advised, however, records requested by an offender which contain personal information relating to a correctional officer or a law enforcement officer may be withheld at the discretion of the law enforcement agency. See Ind. Code § 5-14-3-4(b)(23).

Your next request seems to have fallen victim to the inevitable logistical challenges of the offender mail system. I am familiar with offender’s difficulties of sending and receiving mail correspondence. It often simply gets lost during the various security and screening processes. It appears as if your complaint has successfully allowed the MCCC to identify the records you seek and make them available. It is my sincere and genuine hope you are now able to obtain the records you seek.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Indianapolis Metropolitan Police Department and the Marion County Community Corrections has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Samantha DeWester, Esq.