



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

March 19, 2014

Mr. Lamarr T. Crittenden #148648  
Miami Correctional Facility  
3038 West 850 South  
Bunker Hill, IN 46914

*Re: Formal Complaint 14-FC-36; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Crittenden,

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The IMPD has responded via Ms. Samantha DeWester, Esq., City Prosecutor and Public Access Counselor. Her response is enclosed for your review. 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 February 25, 2014.

## **BACKGROUND**

Your complaint dated February 25, 2014, alleges the Indianapolis Metropolitan Police Department violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On January 16, 2014, you submitted a request for access to a public record to IMPD for an individual's background check. As of the date of your complaint to this Office, you had not received acknowledgement of the receipt of your request.

IMPD responded to your request stating there was a logistical issue with the receipt of your request and discovered it after the timeline for a response had elapsed. Moreover, they argue the IMPD does not conduct background checks and therefore has no records responsive to your request. They informed you accordingly on February 25, 2014.

## 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 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 IMPD’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 request was deemed denied seven (7) days after the IMPD received your request. When a public agency denies a request, it must be accompanied by a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and the name and the title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(d). As this was not done, IMPD is in technical violation of the APRA. Because they do not maintain the records you seek, however, it is my opinion you were not prejudiced by the denial.

## CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indianapolis Metropolitan Police Department violated the Access to Public Records Act as to the timeliness of the acknowledgement, but has since remedied the issue. Because the Department does not conduct background checks and therefore have no records responsive to your request, there is no violation for non-production.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Ms. Samantha DeWester, Esq.