



STATE OF INDIANA

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May 9, 2014

Mr. Daniel W. Beatty #219923
Miami Correctional Facility
3038 W. 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 14-FC-76; Alleged Violation of the Access to Public Records Act ("APRA") by the Madison Police Department

Dear Mr. Beatty,

This advisory opinion is in response to your formal complaint alleging the Madison Police Department ("MPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The MPD has responded via Mr. Bob Cooke, Legal Liaison, City of Madison. His 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 April 7, 2014.

BACKGROUND

Your complaint dated April 7, 2014, alleges Madison 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 or about February 26, 2014, you submitted a public records request seeking documents related to the conduct of a law enforcement officer, the traffic tickets of a named individual and radio logs for a specific date. The MPD acknowledged your request in a timely manner on March 3, 2014, however, as of April 7, 2014 had not produced the documents.

After the filing of your formal complaint, the MPD submitted to the Office of the Public Access Counselor part of the records request. They will be forwarded to you. The MPD offered no other narrative or response as to why it took nearly two months to produce them. They also have stated no records exist related to the work conduct of the officer you named.

DISCUSSION

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 Madison 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 MPD’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.

After the MPD acknowledged your request, you did not receive any information from them until after the filing of your formal complaint. According to Ind. Code § 5-14-3-3(b), an agency has a reasonable time to produce the documents. I have reviewed the documents submitted and the search and retrieval of these documents would not seem to be particularly complex or difficult. Without the benefit of a response from the MPD, I can conclude accordingly.

The MPD certainly does not have to create records to satisfy an APRA request. Therefore, if there is no written information regarding the conduct of an officer, they are not obligated to produce what does not exist. If a factual basis for discipline resulted in suspension, demotion or termination, you would be entitled to that information. See Ind. Code § 5-14-3-4(b)(8)(c).

DISCUSSION

Based on the foregoing, it is the opinion of the Public Access Counselor the Madison Police Department acted contrary to the Access to Public Records Act by not providing you with your documents within a reasonable time. They have not violated the APRA by not producing non-existent records.

Regards,

A handwritten signature in black ink, appearing to be the initials 'JTB' with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Bob Cooke