



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)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 11, 2016

Mr. Dexter Berry #114153
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 16-FC-131; Alleged Violation of the Access to Public Records Act by the Gary Police Department

Dear Mr. Berry:

This advisory opinion is in response to your formal complaint alleging the Gary Police Department ("Department") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Department has responded via Mr. Joe Johnson. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 13, 2016.

BACKGROUND

Your complaint dated June 7, 2016, alleges the Gary Police Department violated the APRA by not responding to your request within seven (7) days.

On May 20, 2016, you sent a request to the Department, seeking certain records. As of the filing of your complaint, you had not received a response. On June 29, 2016, the Police Department responded via the City of Gary Law Department. The Law Department notes all records requests must be sent to the Law Department, as a matter of city policy. The Law Department did not receive your request until the filing of your complaint.

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 Indiana Code § 5-14-3-1*. The Gary Police Department is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Department's disclosable public records

during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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.

The City of Gary's procedure for records requests is that all records requests must be submitted to the Law Department. If there is an established procedure as to the form and function of a public records request made by an individual to an agency, it should be followed. *See Indiana Code § 5-14-3-9(d)(2)*. I have previously stated on a number of occasions it is appropriate for a City or Town to have a centralized public records receiving system (*see 15-FC-266 and 14-FC-51*). However, the mere fact a request does not follow protocol does not mean a request can be ignored. An agency has the affirmative duty to inform the requestor a policy exists under Indiana Code § 5-14-3-9(d)(2) and to invite the requestor to resubmit a proper request.

The Law Department does not state whether your request was received by the Police Department, only that it was not received by the Law Department until your formal complaint was filed. If the Police Department received your request, but did not respond within seven (7) days, the Department is culpable for the oversight under Indiana Code § 5-14-3-9(d)(2) regardless of whether the City's established protocol was followed.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Joe Johnson