

May 1, 2003

Robert G. Beatty
#884923 33-1S
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-27*; Alleged Denial of Access to Public Records by the Indiana State Police Department.

Dear Mr. Beatty:

This is written in response to your formal complaint, which was received on April 17, 2003. You have alleged that the Indiana State Police Department ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a public records request to the Department, which was received March 25th, but that you did not receive a response to your request. Major Anthony Sommer, Staff Attorney for the Department, responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department's failure to respond to your written request within seven (7) days after it was received was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you sent via certified mail a request for copies of all records, reports, radio communication logs entries, etc. related to your arrest by the Department for the time period covering September 4-6, 1987. An agent of the Department signed for your request on March 25th. When you received no response from the Department by April 15, 2003, you filed your formal complaint with this Office.

In response to your complaint, Major Sommer acknowledged that the Department received your request for access to public records and that the Department failed to respond to your request within the seven (7) day period required under the APRA. The Department has now responded directly to you concerning your request for public records. You were provided with the information available to you under Indiana Code section 5-14-3-5. No other documents were produced to you for a variety of reasons.

The Department has already lawfully destroyed under state records management laws any audiotapes or written logs for the time period you requested. Major Sommer further advised you that the Department is not required to disclose to you investigatory records related to your 1987 arrest under Indiana Code section 5-14-3-4(b)(1) and that you are not entitled to criminal history information under Indiana Code section 5-14-3-4(a)(1).

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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you mailed your request by certified mail to the Department and did not receive a response to your request within seven (7) days after the Department received it. It is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While this does not alter my opinion in this matter, it is important to note that the Department has now provided you the police report under Indiana Code section 5-14-3-5, explained that some of these records have already been lawfully destroyed, are confidential or otherwise nondisclosable under the APRA.

CONCLUSION

It is my opinion that the Indiana State Police Department's failure to respond to your written request for access to public records within seven (7) days after it was received was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Major Anthony Sommer, ISP
