

July 15, 2003

Mr. Robert Beatty, 884923
Location 33-1J
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-48*: Alleged Denial of Access to Public Records by the Indiana State Police Department.

Dear Mr. Beatty:

This is in response to your formal complaint, which was received on June 6, 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 the Department failed to produce the records regarding your arrest by the Indiana State Police Department. Mr. 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 did not deny you access in violation of the APRA with respect to your public records request.

BACKGROUND

According to your complaint, you requested from the Department a copy of documents including radio log transmissions related to your arrest by Trooper Michael Gayer on or about September 6, 1987. After receiving no response to your May 23, 2003 request you filed this formal complaint.

In his response to your complaint Mr. Sommers admitted that the Department did not respond to your May public records request. Mr. Sommers further advised that your request for the records in question had already been answered in April. According to Mr. Sommers the Department provided you with information related to your 1987 arrest by Trooper Gayer as required by Indiana Code section 5-14-3-5. However, the Department withheld access to investigatory records and criminal history record information related to this arrest pursuant to Indiana Code section 5-14-3-4(b)(1) and Indiana Code section 5-14-3-4(a)(1). Finally, Mr. Sommer asserts that because your request was a renewed written request "it is not clear that Ind[iana] Code [section] 5-14-3 requires any further response to [your], or otherwise imposes any time limits such as those under Ind[iana] Code [section] 5-14-3-9(a) and (b)."

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).

The Department was required to provide a response to your public records request under Indiana Code section 5-14-3-9(b) and that response was provided to you. Public agencies must advise a requestor as to whether the public records sought will be provided, if access is being denied and the statutory basis for that denial or if the public agency does not have the records requested. If the public agency denies access to public records, the requestor may file suit in the circuit or superior court 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 Mr. Sommer's response, it was unclear to the Department whether they were obligated to respond to your public records requests. Indiana Code section 5-14-3-9(c) requires that oral request renewed in writing must be responded to in writing or by facsimile. However, the APRA is silent regarding a written follow up request to a written public records request. It is my opinion that since Indiana Code section § 5-14-3-9(c) does not address written follow up request to written public records requests those written follow up requests should be treated as a new request and responded to appropriately. However, I understand that you have made requests in the past for the very same documents, so the Department's lack of a response was based upon the fact that they had provided the information that was required to be provided and withheld information that was exempt from disclosure. The fact is that the Department has provided you with the records you are entitled too, any additional records are exempt from disclosure pursuant to Indiana Code section 5-14-3-4(b)(1) and Indiana Code section 5-14-3-4(a)(1) so the failure to provide them to you is not a denial under the APRA. For these reasons, it is my opinion that the Department did not deny you access in violation of the APRA.

CONCLUSION

It is my opinion that the Indiana State Police Department did not deny you access in violation of the APRA with respect to your public records request because the records you requested either have

already been provided to you or are exempt from disclosure pursuant to statute.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

cc: Mr. Anthony Sommer, Staff Attorney
Indiana State Police Department