



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Department South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

August 12, 2008

Melissa Bryant  
111 North Main Street  
PO Box 205  
Brooklyn, Indiana 46111

*Via facsimile transmission*

*Re: Formal Complaint 08-FC-181; Alleged Violation of the Access to Public Records Act by the Brooklyn Police Department*

Dear Ms. Bryant:

This advisory opinion is in response to your formal complaint alleging the Brooklyn Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Department's response to the complaint is enclosed for your reference. It is my opinion the Department has not violated the APRA.

## BACKGROUND

You allege that at the July 11, 2008 meeting of the Brooklyn Town Board you requested copies of signed waivers required for Department ride-alongs. You allege the Board president indicated you should make the request to the Town Marshal. You allege that you then asked the Marshal for copies of the waivers and he indicated he would not or could not provide them at that time. You filed this complaint on July 24, alleging denial of access.

The Department responded to the complaint by electronic mail message dated August 11 from Town Attorney Kevin Dogan. The Department contends the Marshal's response to your request made at the meeting was an indication that he could not go to the Town Hall at that time and retrieve the records. The Department contends that because your request came during a heated exchange at the Board meeting, the Marshal did not understand it to be a request for access to records but instead "hostile public comments directed at him" during the meeting. The Department contends that your request was not made at the Department office and that if you later made the request again, as you indicate you did in your complaint, the Marshal does not recall such a request and it appears the request was not made at the Department office. The

Department contends the Marshal, after receiving a copy of your complaint, has now sent the requested record to you.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 the APRA. I.C. § 5-14-3-3(a).

Here, you allege you made the request for a copy of the record at a meeting of the Town Board. It is my understanding this meeting did not occur at the Department offices or during the Department's regular business hours. Further, it was not a meeting of the Department. The APRA contemplates requests made during the regular business hours of the agency and does not contemplate requests made to a public official outside normal business hours. See I.C. § 5-14-3-3(a).

I have previously addressed this issue in *Opinion of the Public Access Counselor 07-FC-247*. There, an individual made a request to the deputy mayor at a public meeting held at a church. Regarding the request, I wrote the following:

Even if you did specifically request records from Mr. Campbell, it is my opinion this would not be considered a request for access to records under the APRA. The APRA specifically addresses requests made in person by physically appearing at the office of the public agency, by telephone, or by mail or facsimile. I.C. §5-14-3-3; §5-14-3-9. The APRA does not address requests made of public officials outside the office. When public officials travel outside their offices to attend meetings, events, and gatherings, they generally speak with numerous individuals. To consider any of those conversations as requests for access to records under the APRA would fall outside the letter of the law and would be quite impractical. As such, even if you did request copies of the records from Mr. Campbell when he was away from the office at an event, your conversation would not constitute a request for access to records under the APRA.

*Id.*, available at <http://www.in.gov/pac/advisory/files/07-FC-247.pdf>.

In my opinion, the issue here is nearly identical to that presented in *Opinion of the Public Access Counselor 07-FC-247*. Similarly, it is my opinion your comments at the meeting did not constitute a request under the APRA. Notwithstanding this, the Marshal sent you a copy of the requested record after receiving a copy of your complaint from my office.

## CONCLUSION

For the foregoing reasons, it is my opinion the Brooklyn Police Department has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Terry Carlyle, Brooklyn Town Marshal