



# STATE OF INDIANA

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January 8, 2013

Eric D. Smith  
DOC 112675  
5501 S. 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 12-FC-361; Alleged Violation of the Access to Public Records Act by the Johnson County Sheriff's Department*

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Johnson County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sheriff Doug Cox responded in writing on behalf of the Department. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you mailed a written request for records to the Department on November 14, 2012. As of December 14, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Department.

In response to your formal complaint, Sheriff Cox advised that the Department had no record of receiving your request. As the Department is now aware of your request, it has commenced the process of gathering all records that may be responsive.

## 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* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 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* I.C. § 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 (emphasis added). *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The Department maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Department received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). Accordingly, if the Department did not receive your request, it was not obligated to respond to it. As the Department is now aware of your request and commenced the process of determining if it maintains any records that are responsive to your request, I trust that this is in satisfaction of your formal complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage  
Public Access Counselor

cc: Sheriff Doug Cox