



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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May 27, 2015

Mr. Dexter Berry #114153
Correctional Industrial Facility
5124 West Reformatory Road
Pendleton, Indiana 46064

*Re: Formal Complaint 15-FC-134 & 142 (Consolidated); Alleged Violation of the
Access to Public Records Act by the Indianapolis Metropolitan Police Department
Paralegal, Frances Barrington*

Dear Mr. Berry,

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The IMPD has responded via Ms. Samantha DeWester, Esq., City Prosecutor. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaints received by the Office of the Public Access Counselor on April 15, 2015 and April 23, 2015.

BACKGROUND

Your complaints dated April 15 and April 23, 2015 alleges IMPD violated the Access to Public Records Act by failing to provide the records you requested.

On March 25, 2015, you allegedly made a request to the IMPD, seeking affidavits of probable cause. You allege the Paralegal failed to respond to your request, even after the seven (7) day window provided by the APRA. This is the substance of the April 15, 2015 complaint to our office. You also allege you sent a request on April 9, 2015, but have not received a response. This is the substance of the April 23, 2015 complaint.

Counsel for IMPD responded on April 27, 2015 to your complaint(s) to the Office of the Public Access Counselor. Counsel contends IMPD did not receive a request dated March 25, 2015. IMPD did receive two (2) duplicative requests dated April 13 and April 15, 2015. However, counsel notes responses to the requests received were given within the seven (7) day requirement.



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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 Ind. Code § 5-14-3-1. IMPD is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy IMPD’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could consist of an acknowledgement the request has been received and could contain information regarding how or when the agency intends to comply.

With regard to your first complaint, IMPD contends a request dated March 25, 2015 was never received. As for your second complaint, counsel is correct it was acknowledged within the seven (7) day statutory window. The seven (7) day statutory requirement is not considered to be running until the request has been received by the public agency. Here, while your requests were sent possibly March 25, 2015 and for certain on April 9, 2015, they were not received until April 13 and April 15, 2015, respectively. Therefore, IMPD had until April 20 and April 22, 2015 to respond to your requests.

The statutory requirement is considered satisfied on the date the acknowledgement is sent out by the public agency. The acknowledgements were sent out on April 14 and April 16, 2015. Therefore, the responses were within the statutory requirement. Any further delays in your receiving of the acknowledgements could be based on the delays in the DOC mailing system.



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CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the IMPD has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Samantha E. DeWester, Esq.