



STATE OF INDIANA

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August 18, 2009

Pamala and Douglas Sprague
249 Beechview Drive
Greenwood, Indiana 46142

Re: Formal Complaint 09-FC-186; Alleged Violation of the Access to Public Records Act by the Greenwood Police Department

Dear Mr. and Mrs. Sprague:

This advisory opinion is in response to your formal complaint alleging the Greenwood Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to provide you access to copies of records within twenty-four hours of receiving your request. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion Department has not violated the APRA.

BACKGROUND

You allege that on August 11, 2009 you verbally requested access to records maintained by the Department. The Department asked you to make the request in writing, and you did so on August 12. The Department responded to you by letter dated August 13, indicating the Department was compiling and reviewing the records and anticipated having the records available by August 24. You contend the Department was required to provide you access to the records within twenty-four hours of your request. You filed the present complaint on August 14. You requested priority status for the complaint. Because you alleged one of the circumstances set forth in 61 IAC 1-1-3, priority status was granted.

The Department responded to the complaint by letter dated August 17 from Chief Joseph Pitcher. The Department confirms it received your August 12 request and responded by letter on August 13. The Department contends that the APRA provides that a response must be made within twenty-four hours but that production is not required within twenty-four hours. The Department further contends it has at no time denied you access.

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).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). An agency may require that the request be made in writing. I.C. § 5-14-3-3(a). If the request is made in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

This office has said twenty-four hours means twenty-four business hours, or the same time the next day. *See Opinion of the Public Access Counselor 00-FC-28.*

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

You contend that I.C. § 5-14-3-9(a) requires an agency to provide immediate (or within twenty-four hours) access to records. I do not agree. It has long been held by this office that I.C. § 5-14-3-9(a) provides that if an agency does not respond to a verbal or in-person request within twenty-four hours, the request is deemed denied. And when that occurs, the agency has effectively denied access to records without providing a statement as to the specific exemption allowing the agency to withhold access to the records. *See* I.C. § 5-14-3-9(a); I.C. § 5-14-3-9(c)(2).

Here, though, the Department did provide a response to the request. The Department did not deny access but instead provided a timeline by when it anticipated having the records available for you. The Department indicated the records would be available within approximately two weeks of the request. In my opinion, this is a reasonable timeframe in which to provide copies of the requested records.

CONCLUSION

For the foregoing reasons, it is my opinion that DEPARTMENT has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Chief Joseph Pitcher, Greenwood Police Department