



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

December 28, 2012

Lamarr T. Crittenden
DOC 148648
3038 W. 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 12-FC-366; Alleged Violation of the Access to Public Records Act by the Marion County Jail II

Dear Mr. Crittenden:

This advisory opinion is in response to your formal complaint alleging the Marion County Jail II ("Jail") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jennifer Berry-Buchanan, Warden Secretary, responded on behalf of the Jail. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you mailed a written request for records to the Jail on December 5, 2012. As of December 27, 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 Jail.

In response to your formal complaint, Ms. Berry-Buchanan advised that the Jail received your request on December 11, 2012. On December 19, 2012, the Department responded to your request in writing and informed you that the records that were requested were maintained by the Jail for a period of three years. You sought records from October 1, 2008 through May 1, 2009, which have been destroyed by the Jail prior to the receipt of your request in accordance with the applicable retention schedule. A copy of the Jail's response is enclosed for your reference.

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. Accordingly, any person has the right to inspect and copy a public agency'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).

Generally, if a public agency has no records responsive to a public records request, the agency generally does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. The APRA further requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). Here, the Jail has informed you in writing on December 19, 2012 that the records you requested were destroyed pursuant to the applicable retention schedule. As such, it is my opinion that the Jail did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Jail did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Jennifer Berry-Buchanan