



STATE OF INDIANA

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September 16, 2013

Mr. Jim Nowacki
148 N. Hancock St.
Gary, IN 46403

Re: Formal Complaint 13-FC-259; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department

Dear Mr. Nowacki,

This advisory opinion is in response to your formal complaint alleging the Lake County Sheriff's Department, ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has not responded to your complaint. The Department responded to this Office via telephone on September 16, 2013. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 9, 2013. Your formal complaint has been granted priority status.

BACKGROUND

Your complaint alleges that the Lake County Sheriff's Department violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

You allege that two requests dated May 7, 2013 and July 12, 2013, were submitted to the Department asking for a search warrant and accompanying information from a May 4, 2013 search warrant served at your home address. I have been advised by the Department that the records you seek are maintained by the Gary Police Department and not the Lake County Sheriff's office.

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. The Lake County Sheriff's Department 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 the Department's 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 be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

You have not provided your original request to our Office to supplement your Formal Complaint and you allege that you have not received a response from the Department. If the Department has not provided a response, pursuant to Ind. Code § 5-14-3-9(b), it is deemed denied. A denial under this section of the APRA is not a violation if the public agency is not a custodian of the records. The Department has indicated that it is not the custodian of the records you seek.

The records you seek, if they exist, are public records under the APRA. The Department has alleged that these records are in the custody of the Gary Police Department. "[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....").

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that the Lake County Sheriff's Department has not violated the APRA in denying your request.

Regards,

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

Luke H. Britt
Public Access Counselor

cc: John Buncich