

April 5, 2007

Brian Sweeney
P.O. Box 40031
Indianapolis, IN 46240

Re: Formal Complaint 07-FC-61; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Sweeney:

This is in response to your formal complaint alleging that the Indianapolis Metropolitan Police Department (“IMPD”) violated the Access to Public Records Act by failing to produce records in a timely manner. I find that the IMPD has not violated the Access to Public Records Act.

BACKGROUND

You claim in your formal complaint that the IMPD failed to produce the public records you requested, given that over seven days have elapsed since the request was received. The IMPD received your three-part request for records on January 17. The IMPD did issue a responsive letter on January 22, but you contend that the records were to be produced within seven days. You requested, for the period of 1996 to the present:

1. The firearm return policy for the [IMPD] including date promulgated, procedures followed in its promulgation, votes taken on its issuance, and all signatories to the policy;
2. All records relating to the intake, storage, return and disposal of all firearms, not purchased as new by the police, which have come into the custody of the City of Indianapolis, the [IMPD], the Indianapolis Police Department, the Marion County Sheriff or any other unit or instrumentality of Indianapolis or Marion County.
3. All correspondence, notes, telephone logs and all other evidence of communication to or from the City of Indianapolis, the [IMPD], the Marion County Sheriff or any other unit or instrumentality of Indianapolis or Marion County concerning the firearms described in item #2.

Your request stated that you intended to seek the broadest range of public records, and all doubts concerning whether a record is sought shall be construed as a desire to receive the record. “If these records are not produced within seven days, a formal complaint will be filed with the Public Access Counselor...”

Although you acknowledge receiving the firearm return policy of the Indianapolis Police Department, this is not the record you requested because the Indianapolis Police Department no longer exists, and your request was specifically for the new policy of the IMPD.

Ms. Lauren Toppen of the IMPD responded to your complaint, and you have received a copy of the letter. Ms. Toppen argued that the APRA does not require records to be produced within seven days, only within a reasonable time, consistent with the opinions of the Public Access Counselor. Ms. Toppen argued that the IMPD’s response has been timely and production has been reasonable. The IMPD produced the firearm policy of the former IPD on February 21. The records concerning the intake, storage, and return and disposal of all firearms since 1996 amount to ten years’ of logs and data that is stored electronically. The old system would not have been able to handle the data extraction task that would be required to provide this information. However, the data is being migrated to a new system. This migration should be completed within one month at which time the data can be extracted and provided to Mr. Sweeney.

On March 9, the IMPD provided the IMPD firearm policy that went into effect on January 1, 2007. Ms. Toppen contends that the IMPD has continued to look for responsive records, and has and will continue to provide them as soon as possible. The IMPD’s production has been reasonable.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

While these provisions for response set forth specific timeframes, a response is not necessarily the time within which the agency must produce the record. Rather, this office has stated on many occasions that the time for production must be reasonable under the circumstances. In addition, the APRA states that a public agency must regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a).

This office has recommended that public agencies provide the requester with periodic updates on the progress of the agency in locating, reviewing and copying records. In addition, to the extent that some of the records may be located and reviewed sooner than others, the public agency should disclose those records in a piecemeal fashion.

Hence, I find that your contention that the records have to be produced within seven days of the date of receipt of your request is not valid or supported in the APRA. I also do not find IMPD's production of your records unreasonable on the whole, although I do find that the production of the IMPD's January 1, 2007 policy on March 9 does not appear reasonable.

First, it seems odd for you to complain that the record of the firearms return policy of the Indianapolis Police Department was not among the records you requested because your item #1 was for only the records of the IMPD. However, your request spanned the time from 1996 to the present, and you declared that you intended to be given the broadest range of records, with doubt resolved in favor of receiving a record. In any case, you now have the IMPD firearm return policy. The IMPD does not explain why the new January 1 policy was produced seven weeks after your request, however. On its face, this period seems rather long for that document, particularly where the policy had not changed much from the previous department's.

The other requests #2 and #3 do appear to be quite voluminous. While I agree that electronically stored records are sometimes easier to search and should be more "accessible," the IMPD has said that the records are temporarily not able to be extracted until their migration to a newer system. The issue here is whether the IMPD should be able to handle a request for data in spite of a transition to a new system.

The APRA requires that a public agency make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3(d). The IMPD has averred that it is making these reasonable efforts, and I do not detect any facts that makes this assertion suspect or the effort unreasonable.

Further, the IMPD has described its efforts to communicate with you throughout the process and to provide records as they become available. It is my opinion that the IMPD has not violated the Access to Public Records by "de facto" denying you a record by not producing the records in a timely fashion, under the circumstances. I recommend that the IMPD continue to cull its records for all responsive records, and to provide the data you request as soon as possible once the migration to the new computer system is complete.

CONCLUSION

For the foregoing reasons, I find that the Indianapolis Metropolitan Police Department has not violated the Access to Public Records Act except that the IMPD's firearm policy should have been made available in fewer than seven weeks.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lauren R. Toppen