



STATE OF INDIANA

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November 10, 2010

Mr. Alan W. Jenkins
DOC # 870097
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 10-FC-244; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff

Dear Mr. Jenkins:

This advisory opinion is in response to your formal complaint alleging the Marion County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Sheriff's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you sent several records request to the Sheriff. In response to your complaint, the Sheriff states that it never received your request and has no records responsive to your request.

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." I.C. § 5-14-3-1. The Sheriff does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Sheriff's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Sheriff asserts it did not receive your request. If the Sheriff did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a

written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Sheriff did not receive your request, it did not violate the APRA by not responding. *See Opinion of the Public Access Counselor 09-FC-44.*

Moreover, if the Sheriff maintains no records responsive to your request, the Sheriff did 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.* Moreover, the Sheriff was not required to create records to satisfy the request. *Opinion of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”). Therefore, it is my opinion that the Sheriff has not violated the APRA by denying your request for records that the Sheriff does not have.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Kevin C. Murray