



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 14, 2009

Mr. Christopher O. Rondeau, # 585257
Marion County Jail
40 S. Alabama St. 2C
Indianapolis, IN 46204

Re: Formal Complaint 09-FC-185; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Department

Dear Mr. Rondeau:

This advisory opinion is in response to your formal complaint alleging the Marion County Sheriff's Department ("MCSD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. Specifically, you allege that the MCSD refused to provide you with records regarding the distribution of milk to inmates. For the following reasons, my opinion is that the MCSD did not violate the APRA.

BACKGROUND

According to your complaint, you filed two grievances with the MCSD's Grievance Deputy after the MCSD failed to include a carton of milk with your breakfast on July 9, 2009. The MCSD responded to your grievance by claiming its records showed that you did receive a carton of milk with breakfast on July 9, 2009. In your second grievance form, you requested to see copies of the relevant records pursuant to the APRA, but the MCSD did not respond until ten (10) days later when it denied your request.

The MCSD's response to your complaint is enclosed for your reference. Although the MCSD concedes that you filed two grievances, one of which contained your request to see the MCSD's milk distribution records, the MCSD contends that you never filed a public records request. The MCSD argues that the grievance process is not the proper means by which to ask for public records and that there is a separate process for making such requests. According to the MCSD, you did not submit any public records requests via that process. Finally, the MCSD notes that it ultimately gave you the records you requested.

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 MCSD does not dispute 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 public records of the MCSD 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).

Under the APRA, an agency may require that public access requests are submitted in a particular form: “A request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.” I.C. § 5-14-3-3(a). The MCSD requires public access requests to be made on the MCSD’s public access request form. The MCSD claims that you did not submit such a form with the MCSD or any other agency of the City of Indianapolis or Marion County. Previous Public Access Counselors have advised that requiring a requestor to utilize the agency’s form does not constitute a denial of access. *See* Opinion of the Public Access Counselor 01-FC-34 (O’Connor); 09-FC-110 (Neal). Thus, if you did not submit a valid public records request via the MCSD’s public records request process, the MCSD did not violate the APRA by failing to provide you with the milk distribution records.

Moreover, even assuming for the sake of argument that your citation to the APRA in your grievance is a valid public access request, the MCSD states that it has provided you with the records you requested. Although the MCSD’s failure to respond to a *valid* public records request in writing within seven (7) days would fall short of compliance with APRA, the MCSD did not otherwise violate the APRA in this case because it ultimately provided you with the documents you requested. *See* Opinion of the Public Access Counselor 07-FC-215 (“[W]hile the [agency’s] response was untimely under the APRA, if the [agency] did ultimately produce the documents, the [agency] did not otherwise violate the APRA.”).

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Samantha S. Karn, City of Indianapolis