



STATE OF INDIANA

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November 20, 2009

Mr. David L. Pemberton
DOC # 873670
P.O. Box 601
Pendleton, IN 46064

Re: Formal Complaint 09-FC-246; Alleged Violation of the Access to Public Records Act by the Boone County Sheriff's Department

Dear Mr. Pemberton:

This advisory opinion is in response to your formal complaint alleging the Boone County Sheriff's Department ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, my opinion is that TRSC did not violate the APRA.

BACKGROUND

In your complaint, you allege that you sent a letter to the Sheriff on October 1, 2009, in which you requested "the document showing the time and date I was received in the Boone County Jail (Nov. 2006) and the time and date I was discharged from the Boone County Jail." As of the date of your complaint on October 19, 2009, you had received no response from the Sheriff.

My office forwarded a copy of your complaint to the Sheriff. The response of Marsha Atwell, the executive secretary for the Sheriff, is enclosed for your reference. Ms. Ashwell states that she has searched the Sheriff's records and maintains that the Sheriff has not received your request. Ms. Ashwell notes that the Sheriff keeps records of dates and times that requests are mailed back to the person requesting public records. Ms. Ashwell further responds by saying that she mailed you the records that you requested on November 6, 2009.

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. TRSC does not dispute that it constitutes 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 TRSC’s public records 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).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

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.

Moreover, it is my understanding that the Sheriff has now provided you with all responsive records. I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility did not violate the APRA by not responding to a request it did not receive.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Marsha Ashwell, Boone County Sheriff’s Department