



STATE OF INDIANA

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November 20, 2009

Mr. Ryan P. Sink
Haskin & LaRue, LLP
255 N. Alabama St.
Second Floor
Indianapolis, IN 46204-2131

Re: Formal Complaint 09-FC-247; Alleged Violation of the Access to Public Records Act by the Vigo County Sheriff's Department

Dear Mr. Sink:

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 the Sheriff violated the APRA by failing to respond to your request within seven (7) days in accordance with section 9(c) of the APRA.

BACKGROUND

In your complaint, you allege that you sent a letter to the Sheriff on September 30, 2009, in which you requested (1) all documents related to the decision to terminate Ms. Alcorn, (2) all emails to and/or from Sheriff Marvel wherein Ms. Alcorn's name is mentioned, and (3) all emails to and/or from Dan Lee wherein Ms. Alcorn's name is mentioned. You further allege that the Sheriff responded by producing only one document: a purported resignation letter by Ms. Alcorn. No other documents were produced and the Sheriff did not explain the absence of other documents. Moreover, the Sheriff did not respond to your request until October 15, 2009, which was in excess of the seven (7) day response deadline provided by Indiana Code section 5-14-3-9(b).

My office forwarded a copy of your complaint to the Sheriff. The response of Robert L. Wright, the attorney for the Sheriff and Vigo County, is enclosed for your reference. Mr. Wright states that he directed a letter to you dated November 5, 2009, in which he enclosed a copy of all documents related to the decision to terminate Ms. Alcorn. Mr. Wright also enclosed a letter from the Sheriff noting that "[u]pon examination it has been found there are no emails to and/or from myself in regards to Ms. Kimberly Alcorn. It is unknown whether Dan Lee had any such emails. Dan Lee's last

day of employment with the [Sheriff] was September 23, 2009. Mr. Wright further states that he never received a copy of your September 30, 2009, request, and was likewise unaware that the Sheriff had responded with Ms. Alcorn's resignation letter. Finally, Mr. Wright asserts that the records that he sent to you on November 5, 2009, "encompass all information which the [Sheriff] has in response to [your] request pursuant to Indiana Code section 5-14-3-3(a)."

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). Under the APRA, a public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). In my opinion, the Sheriff violated the APRA by failing to provide you with a response within seven (7) days that satisfied the requirements of section 9(c) of the APRA.

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: Ryan P. Sink, Haskin & LaRue, LLP