



# STATE OF INDIANA

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December 11, 2009

Mr. Leslie D. Merkley  
1947 East Spring St.  
New Albany, IN 47150

*Re: Formal Complaint 09-FC-267; Alleged Violation of the Access to Public Records Act by the Indiana Occupational Safety and Health Administration*

Dear Mr. Merkley:

This advisory opinion is in response to your formal complaint alleging the Indiana Occupational Safety and Health Administration ("OSHA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, it is my opinion that OSHA violated the APRA's procedural requirement to respond to a mailed public records request within seven (7) days of receipt, but OSHA did not otherwise violate the APRA.

## BACKGROUND

In your complaint, you allege that you mailed a records request to OSHA on October 21, 2009. As of November 6, 2009, the date you filed this complaint, OSHA had not responded to your request.

My office forwarded a copy of your complaint to OSHA. Deputy Attorney General Julie C. Alexander, legal counsel for the Indiana Department of Labor, responded on behalf of OSHA. Her response is enclosed for your review. Ms. Alexander states that OSHA has no records responsive to your request. Ms. Alexander also notes that she has informed you via a November 20, 2009, email that your request did not get processed or entered into OSHA's database. As a result, OSHA has not been able to locate it.

## 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 Jail 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 the Jail’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).

Under the APRA, if a 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). 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). Here, you enclosed a certified mail receipt that shows OSHA received your records request. If OSHA received your request but failed to respond in accordance with Section 9, OSHA violated the APRA.

To the extent that OSHA does not maintain the records you requested, OSHA did not violate the APRA by failing to produce them to you. Nothing in the APRA requires a public agency to develop records or information pursuant to a request; the APRA requires the public agency to provide access to records already created and maintained by the agency. *See Opinion of the Public Access Counselor 09-FC-135.*

#### CONCLUSION

For the foregoing reasons, it is my opinion that OSHA violated the APRA’s procedural requirement to respond to a mailed public records request within seven (7) days of receipt, but OSHA did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Julie C. Alexander