



STATE OF INDIANA

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December 17, 2009

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

Re: Formal Complaint 09-FC-272; Alleged Violation of the Access to Public Records Act by the Putnam County Sheriff

Dear Mr. Pemberton:

This advisory opinion is in response to your formal complaint alleging the Putnam County Sheriff's Department ("Department") 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 Department violated the APRA's requirement to respond to your request within seven (7) days but did not otherwise violate the APRA because the documents you seek do not exist.

BACKGROUND

In your complaint, you allege that you sent a request to the Department in which you requested certain book-in records that showed you as having a hold from Marion County and Boone County. You further allege that the Department failed to respond to your request. In response, Capt. Joseph Myers of the Department acknowledges that the Department received your request, but the Department has no such documentation and the Department did not produce the records to you because they do not exist.

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 Department 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

Department's public records during regular business hours unless the public records are exempt 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Because the Department did not respond to your request, it is deemed denied under section 9 of the APRA. When a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). If the Department failed to do so, it violated section 9(c) of the APRA.

It is my opinion that the Department did not otherwise violate the APRA by failing to produce the records you sought. If a public agency has no records responsive to a public records request, the agency does 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*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy....").

CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated section 9(c) of the APRA by failing to respond to your request but did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Capt. Joseph Myers, Putnam County Sheriff's Department