



STATE OF INDIANA

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December 1, 2011

Mr. David M. Burks-Bey
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 11-FC-285; Alleged Violation of the Access to Public Records Act by the Office of the Attorney General.

Dear Mr. Burks-Bey:

This advisory opinion is in response to your formal complaint alleging the Office of the Attorney General ("Attorney General") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Matt Light, Chief Counsel for Advisory and ADR Services, responded on behalf of the Attorney General. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on October 17, 2011, you submitted a written public records request to the Attorney General for a copy of "Agreement Terminating Litigation" under Cause No. 3:02-CV-00573-RLM-CAN (United States District Court; Northern District of Indiana). You further allege that that Attorney General denied your request on October 27, 2011 by failing to respond to your request.

In response to your formal complaint, Mr. Light provided that the Attorney General received your request on October 27, 2011, to which a file-stamped copy is enclosed for your reference. The correspondence was file-stamped by the U.S. Post Office on October 21, 2011. Upon receipt of the request, it was inadvertently routed to the Attorney General's Civil Rights Division. The request was thereafter properly forwarded to the Advisory Division, which received the request on October 31, 2011. On November 4, 2011, the Attorney General mailed an acknowledgement letter to you, where it attempted to determine whether the identified cause number belonged to a case that the Attorney General had participated in. Upon further review, it was determined that the cause number that you had identified belonged to a case that the Attorney General had represented the Indiana Department of Corrections. The case has been closed for several years and the documents related to the case were kept at the Attorney General's archive facility. The record that you sought was not filed with the U.S. District

Court; as such it was not available via the court's online case management system. Regardless, the Attorney General has located an unexecuted copy of the agreement and has provided a copy to you, which is enclosed for your review. Upon receipt of an executed version of the agreement from the archives, the Attorney General will produce a copy to you as soon as possible.

ANALYSIS

The public policy of the APRA states that "(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." *See* I.C. § 5-14-3-1. The Attorney General is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Attorney General's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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. For requests tendered by mail, the date of receipt by the public agency is the operative trigger to begin the statutorily prescribed response time. *See* I.C. 5-14-3-9(b). The Attorney General acknowledged that it received your request on October 27, 2011. Accordingly, the Attorney General was required to respond to your request within seven days of its receipt, or November 2, 2011, or your request would be deemed denied. The Attorney General has provided that it responded to your request by sending an acknowledgement letter to you on November 4, 2011. Thus, the Attorney General acted contrary to the timelines provided under section 9 of the APRA in responding to your request.

However, as to the substance of your formal complaint, the Attorney General has provided an unexecuted copy of the record that was sought and will be mailing an executed version, which is identical to the unexecuted version, upon its receipt from the archives division. I trust that the Attorney General's response is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Attorney General acted contrary to the APRA by failing to respond to your written request within the timelines provided by section 9 of the APRA. As to all other issues, it is my opinion that the Attorney General has complied with all requirements of the APRA in responding to your records request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Matt Light