



STATE OF INDIANA

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December 6, 2011

Steven L. Robbins
DOC 145839
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 11-FC-293; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Department

Dear Mr. Robbins:

This advisory opinion is in response to your formal complaint alleging Marion County Sheriff's Department Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* Kevin Murray, Attorney, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have submitted a written request to the Department for a certified copy of Incident History Detail from 4242 or CAD Report I-02132079 ("Incident History"). The Department responded to your request and provided that it no longer had a copy of the Incident History. You further allege that the Department refused to certify a copy of the Incident History that you provided to the Department.

In response to your formal complaint, Mr. Murray advised that the record that you requested is no longer maintained by the Department. Mr. Murray maintained that the Department would not certify the records that you had requested, as it is impossible for it to authenticate records that it did not produce.

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 Department 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 Department'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).

Generally, 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....”). It is possible that the Department once maintained the records you requested but no longer does. The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. See I.C. § 5-14-3-4(e). As long as the records you seek were disposed of in accordance with an applicable retention schedule, the Department did not violate the APRA by failing to maintain them beyond the retention period. See *Opinion of the Public Access Counselor 11-FC-133*.

You have also requested the Department certify a copy of the Incident History that you have provided; however, the Department is unable to compare the record that you have provided with the original record as it no longer maintains the original record. I would note that there is no provision in the APRA requiring a public agency to certify records pursuant to a request. See *Opinion of the Public Access Counselor 06-FC-65*; *07-FC-228*; *08-FC-189*. Here you are asking the Department to even go beyond this, to certify a record that it does not maintain. It is my opinion that the Department did not violate the APRA in denying you request to certify documents that the Department does not maintain.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,



Joseph B. Hoage
Public Access Counselor

CC: Kevin Murray