



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 4, 2012

Timothy J. Kopkey
DOC 153747
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 11-FC-304; Alleged Violation of the Access to Public Records Act by the Cass County Sheriff's Department

Dear Mr. Kopkey:

This advisory opinion is in response to your formal complaint alleging the Cass County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department on November 10, 2011 for the complete criminal and disciplinary history for Frederick Rodgers, John Rodgers, and Robert Zimmerman. On November 22, 2011, the Department responded in writing and produced all records that were responsive to your request. The Department provided that the persons you requested disciplinary information for have never been employed by the Department. Further, the Department was unable to find a criminal history on any individuals that were sought. You allege that one of the individuals cited in your request has been or recently returned to employment with the Department. The Department advised that the records you sought appear to be from Pulaski County, not Cass County, and that you should contact the appropriate representatives of Pulaski County in regards to your request.

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).

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. Here, the Department responded to your request within the timelines provided by section 9 of the APRA.

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....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the Department provided that the persons you requested disciplinary information for had never worked for the Department. In addition, the Department was unable to find a criminal history for any of the individuals that you cited. As such, the Department did not violate the APRA in response to your request. I would concur with the Department that the records you are seeking appear to be from Pulaski County, not Cass County, and would advise you to submit an *APRA* request to the appropriate public agency in Pulaski County (emphasis added).



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CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Randy Pryor, Cass County Sheriff