



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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June 08, 2012

Mr. Derek L. Morris
DOC 104145
3038 W 850 South
Bunker Hill, Indiana 46914-9810

Re: Formal Complaint 12-FC-126; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Department on or about May 3, 2012. As of May 21, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Department has failed to respond to your request in any fashion.

In response to your formal complaint, Ms. Newsom advised that the Department received your written request on May 7, 2012. On May 14, 2012, the Department responded in writing to your request and acknowledged its receipt. A copy of the Department's response is enclosed for your reference.

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 twenty-four 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 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 received your written request for records on May 7, 2012. On May 14, 2012, the Department responded in writing to your request and acknowledged its receipt. It is important to note that the Department is required to respond within seven days of the date of receiving your request, not the date you mailed the request. As such, it is my opinion that the Department complied with the requirements of section 9 of the APRA in acknowledging the receipt of your request.

At this point, the Department is required to provide all records in response to your request in a reasonable period of time. The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. The Department has advised that its search for records responsive to your request has commenced and the process is ongoing. Further, the Department will notify you in writing when said records are available for your review.



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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 "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Andrea Brandes Newsom