



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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August 20, 2012

Mr. William J. VanHorn  
DOC 883134  
1946 West US Highway 40  
Greencastle, Indiana 46135

*Re: Formal Complaint 12-FC-204; Alleged Violation of the Access to Public Records Act by the Delaware County Sheriff's Department*

Dear Mr. VanHorn:

This advisory opinion is in response to your formal complaint alleging the Delaware County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Captain Richard W. Pickett responded on behalf of the Department. His 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 July 5, 2012. As of July 25, 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, the Captain Pickett advised that the Department has no record of receiving your request for records from July 5, 2012. However, on August 5, 2012, the Department received your request for records post-marked July 25, 2012. On August 6, 2012, the Department sent to you all records that were responsive 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 (emphasis added). *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. The seven-day time period for the Department to respond to a request pursuant to I.C. § 5-14-3-9(b) does commence until the date the Department received the request; not the date the request was placed in the mail.

The Department maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Department received your request. Under the APRA, if a 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). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). If the Department received your request and did not respond to it within these timeframes, the Department acted contrary to the APRA. However, if the Department did not receive your request, it was not obligated to respond to it.

As provided in the Department's response, it received your July 25, 2012 post-marked request on August 5, 2012. On August 6, 2012, all records responsive to your request were mailed to you. I trust that this is in satisfaction of your formal complaint. If you want to ensure that your request reaches the Department in the future, you may consider sending the request via certified mail or making arrangements for your request to be hand-delivered.



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## CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink that reads "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Captain Richard W. Pickett