



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

February 17, 2012

James P. Baxter
910 Thompson Road
Charlestown, Indiana 47111

Re: Formal Complaint 12-FC-21; Alleged Violation of the Access to Public Records Act by the Charlestown Police Department

Dear Mr. Baxter:

This advisory opinion is in response to your formal complaint alleging the Charlestown Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Michael Gillenwater, 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 the entire case file, including a copy of all investigative reports, 911 calls, and forensic evidence in regards to Case No. 1010398. In response to your request, the Department provided a copy of the Incident Report and certain photographs detailing the crime scene and your injuries.

In response to your formal complaint, Mr. Gillenwater advised that you received all information or records that the Department maintained for the incident. Further, the 911 recording you requested is not maintained by the Department.

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 for records within the timelines provided in section 9 of the APRA.

The Department has provided that you have been given all records that are responsive to your request. As to your request for a 911 call, the Department has provided that it does not maintain copies of 911 calls and forwarded you to the respective agency that would maintain the record. 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....”). As the Department has provided to you all records that are responsive to your request, it is my opinion that it did not violate the APRA.

CONCLUSION

Based on the foregoing, 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'.

Joseph B. Hoage
Public Access Counselor

cc: Michael Gillenwater