



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

September 10, 2012

Ernest J. Mance
DOC 146766
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-225; Alleged Violation of the Access to Public Records Act by the Gary Police Department

Dear Mr. Mance:

This advisory opinion is in response to your formal complaint alleging Gary Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your complaint to the Department. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Department on July 16, 2012. On August 2, 2012, Commander Peter Sormaz responded in writing to your request and provided all records that were maintained by the Department. Commander Sormaz provided that all records pertaining to Cause No. 45-G02-0304-MR-00006 can be obtained via the Lake County Prosecutor.

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



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

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. Here, the Department responded in writing to your request for records on August 2, 2012. Without a response from the Department to your formal complaint, I am unaware when it received your initial request. As such, if the Department failed to respond in writing to your written request within seven (7) days of receipt, it acted contrary to the requirements of the APRA.

As to the substance of your request, as the Department has now provided all records, I trust that this is in satisfaction of your complaint. Along with providing the requested records, the Department advised that certain records you requested were maintained by the Lake County Prosecutor's Office ("Prosecutor"). As such, I would encourage you to submit a request directly to the Prosecutor. If you are of the opinion that the Prosecutor has improperly denied your request, you may file a separate formal complaint against the Prosecutor with our office.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated the APRA if it failed to respond to your written request within seven (7) days of its receipt.

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: Gary Police Department