



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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September 25, 2012

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

*Re: Formal Complaint 12-FC-249; 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 August 1, 2012. As of August 29, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Coroner has failed to respond to your request. You provide that the intent of your request was to resolve your much larger records request that was submitted to the Department on May 14, 2012.

In response to your formal complaint, Ms. Newsom advised that your original request ("First Request") was received by the Department on May 7, 2012. The First Request was four pages in length and requested a broad number of police reports concerning sixty-eight (68) different individuals, some identified by first name only. The Department responded in writing to your First Request on May 14, 2012. On August 8, 2012, the Department received additional correspondence ("Supplemental Request") from you which sought police reports concerning fifteen (15) individuals, many of whom were part of the First Request. You advised in your Supplemental Request that "If you can get me these few police reports within two weeks, I'll cancel my four page request on May 2, 2012." The Department did not respond in writing to your Supplemental Request because it did not believe that it was a new public records request.

As to the allegation that the Department has not timely produced records in response to the First Request, Ms. Newsom advised that the Department has been in the process of searching for all records that are responsive to your request. The Department routinely receives public records requests that concern investigatory or other protected records held by a law enforcement agency, which require additional time to process. The Department processes the requests as efficiently as possible, but the request cannot expedited further in situations where a requester supplements or amends an existing records request seeking additional records or redirecting the scope of a records search. Your First Request was quite voluminous in scope; while the Supplemental Request was smaller, it still included specific date ranges for which different reports were sought. In addition, both requests submitted specified search parameters for certain individuals such as “last two reports to date”, “last two after 2009, and “last two after May 1, 2010.” The search for responsive police reports is predominately a manual process. Once records have been retrieved, they must be printed and reviewed for redactions. The Department anticipates that all records, responsive to both the First and Supplemental Request, may be available as early as fifteen (15) days from the date of this response. When the records do become available, the Department will advise you in writing the total cost of the records to be provided.

#### 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). The seven-day time period does not commence until the public agency is in receipt of the request for records. 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.

As applicable here, there is no question that the Department complied with the requirements of Section 9 in responding to your First Request, in writing, within seven (7) days of receipt. As to your Supplemental Request, the Department did not treat the



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request as a second, separate request, due to many records that were sought were part of the First Request and you indicated that you intended to cancel the original First Request, if all records from the Supplemental Request could be provided in two weeks. Due to the confusing nature of your Supplemental Request, which I have had the opportunity to review, it is my opinion that it was reasonable of the Department to believe that you were amending your First Request, rather than submitting a second, separate request for records. As such, it is my opinion that the Department did not violate section 9 of the APRA in response to your Supplemental Request.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable to your May request, I would note that your request consists of sixty eight (68) separate requests for police reports for various individuals. In some parts, you requested multiple reports on an individual, in others you have only provided a first name for the Department to utilize in its search. The Department has provided that it began the search for the records that were responsive to your request upon its receipt, but noted that the search for police reports is predominately a manual process. In addition, the Department has the responsibility under the APRA to review all records prior to

disclosure. During the process of responding to all public record requests received by the Department, it is responsible for maintaining the normal duties of the agency. As such, it is my opinion that the Department has complied with the requirements of I.C. § 5-14-3-3(b) in responding to your May request. As the Department has now provided that it anticipates in having all records responsive to your requests within fifteen (15) days, at which time you will be informed of the fees associated, I trust that this is in satisfaction of this part of your formal complaint.

#### 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". The signature is written in a cursive style with a large initial "J" and "H".

Joseph B. Hoage  
Public Access Counselor

cc: Andrea Brandes Newsom