



# 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) 234-0906  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 15, 2012

Eric D. Smith  
DOC 112675  
5501 S. 1100 W  
Westville, Indiana 46391

*Re: Formal Complaint 12-FC-282; Alleged Violation of the Access to Public Records Act by the Indianapolis Police Department*

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging 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 the Department advised you in writing that there would be a fee of \$5.18 for the records you had requested. On June 4, 2012, the correctional facility sent a check for the correct amount to the Department. You provide that the check has not been cashed nor have you received any records. Your counselor has attempted to contact the Department regarding your request, to no avail.

In response to your formal complaint, Ms. Newsom apologized for the inconvenience and inadvertent delay in producing the records that were responsive to your request. The Department did receive your check for the applicable fees on June 18, 2012; due to an administrative error, the check was misplaced. The check has since been located and the records were mailed to you in September 2012. Ms. Newsom advised that at no time did the Department intentionally delay or deprive you access to the records that were requested.

## 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).

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 here, it is my opinion that the Department failed to comply with the requirements of section 3(b) of the APRA in providing all records in a reasonable period of time. However, as the Department has indicated that the delay was due to an administrative error and that all records were mailed to you in September 2012 by the Department immediately upon being notified of the error, I trust that this is in satisfaction of your formal complaint.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Department failed to comply with the requirements of section 3(b) of the APRA in providing all records that were responsive to your request in a reasonable period of time.

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 a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Andrea Brandes Newsom