



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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February 28, 2012

Maetta Vance  
720 W. Centennial Avenue # 5  
Muncie, Indiana 47303

*Re: Formal Complaint 12-FC-47; Alleged Violation of the Access to Public Records Act by the Indiana State Police Department*

Dear Mr. Vance:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Major Douglas E. Shelton 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 for records that was received by the Department on January 30, 2012. As of February 22, 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 in any fashion to your request. You have submitted a copy of a U.S. Postal Service Certified Mail Receipt in further support that the Department received your request on January 30, 2012.

In response to your formal complaint, Major Shelton acknowledged that the Department received your request on January 30, 2012 and that it failed to respond in writing to your request within seven (7) days of its receipt. On February 20, 2012, Major Shelton responded in writing to your request, acknowledged its receipt, and provided the respective fees that must be received by the Department prior to the disclosure of the record that was sought.

## 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 acknowledged that it failed to respond to your written request within seven (7) days of its receipt. As such, it is my opinion that the Department acted contrary to the APRA. As the Department has now responded to your request in writing and provided the respective fees associated with the records that were sought, I trust that this is in satisfaction of your complaint.

It is not entirely clear from the request that you submitted to the Department whether you sought a copy of the audio recording of the hearing or a transcript produced from the audio recording. There is no dispute that the record of the hearing, whether in audio or written form, is a public record pursuant to the APRA and shall be disclosed in response to a properly submitted request. If you seek an audio recording of the hearing and the Department has reasonable access to a machine capable of reproducing the audio recording, the Department would need to provide you with one copy of the audio record. *See* I.C. § 5-14-3-8(e)(2). The Department would be allowed to charge you for a copy of the audio record pursuant to I.C. § 5-14-3-8. However, if you seek a written transcript of the proceeding, the Department has provided to you in its response the fees associated with the production of the record in written form. *See* I.C. § 4-21.5-5-13(d). A written transcript of the hearing, produced by the Department, would be required should you seek to file a petition for review in a court of law. *See* I.C. § 4-21.5-5-13(c). Pursuant to I.C. § 4-21.5-5-5, a petition for review is timely only if it is filed within thirty (30) days after the date that notice of the agency action was served.



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## CONCLUSION

For the foregoing reasons, it is my opinion that the Department acted contrary to the APRA by failing to respond to your written request within seven (7) days of its receipt.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Douglas E. Shelton