



STATE OF INDIANA

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May 6, 2009

Ryan Sink
Haskin Lauter & LaRue, LLP
255 North Alabama Street
Indianapolis, Indiana 46204

Re: Formal Complaint 09-FC-107; Alleged Violation of the Access to Public Records Act by the City of Brazil Police Department

Dear Mr. Sink:

This advisory opinion is in response to your formal complaint alleging the City of Brazil Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department's response was untimely under the APRA and the Department should provide you access to any public records it maintains which are responsive to your request and not excepted from disclosure pursuant to I.C. § 5-14-3-4.

BACKGROUND

You allege that on March 16, 2009 you sent to the Department a request for access to records. Receiving no response, you submitted a subsequent request on April 10. As of the date of your complaint, you allege you have not received a response to your request. You allege this constitutes a denial of access in violation of the APRA. Your complaint was postmarked on April 23, and my office received it on April 24.

The Department responded to the complaint by letter dated April 27 from attorney Craig McKee. Mr. McKee indicates his belief that city officials hesitated to respond to the requests because of the pending lawsuit and because they anticipated Mr. McKee was on notice of the request for information. Mr. McKee indicates he promptly communicated to you that he would work to accommodate your request.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-

14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile transmission and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency.

Here, you sent the request to the Department on March 16 and again on April 10. If the Department received the request but did not respond to you within seven days of receipt of the request, the response was untimely under the APRA. *See* I.C. § 5-14-3-9(b). While I appreciate Mr. McKee's speculation as to why city officials might not have responded to the request, it is important for city officials and employees to know that the APRA exists separate from the discovery process. Nothing in the APRA would act to excuse an agency from responding to a request on the basis that the agency and the requestor are involved in pending litigation. And nothing in the APRA requires a requestor to provide notice of the request to the agency's counsel. Based on Mr. McKee's letter, I trust the Department will now work to provide you access to any records responsive to your request which are not excepted from disclosure pursuant to I.C. § 5-14-3-4.

You contend the records may not be excepted from disclosure on the basis of the investigatory records exception. I do not here address that substantive issue because the Department has not asserted the investigatory records exception.

CONCLUSION

For the foregoing reasons, it is my opinion the Department's response was untimely under the APRA and the Department should provide you access to any public records it maintains which are responsive to your request and not excepted from disclosure pursuant to I.C. § 5-14-3-4.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Craig McKee, Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP
Chief David Archer, City of Brazil Police Department