



STATE OF INDIANA

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May 13, 2009

Lonnie Merriweather
c/o John Emry
62 West Jefferson Street
Franklin, Indiana 46131

Re: Formal Complaint 09-FC-110; Alleged Violation of the Access to Public Records Act by the City of South Bend Police Department

Dear Mr. Merriweather:

This advisory opinion is in response to your formal complaint alleging the City of South Bend Police Department (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by requiring you to complete and submit a prescribed form when submitting a 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 has not violated the APRA.

BACKGROUND

You submitted to the Department a letter dated April 21, 2009 wherein you requested access to a number of records. The Department responded by letter dated April 24, indicating it requires requestors to complete the agency prescribed form when submitting requests for access to records. The Department included a copy of the form with the April 24 communication. In the present complaint you contend it is “doubtful that the legislature intended this absurd result” (i.e. resubmitting a written request using the agency’s prescribed form when a letter requesting the records has already been submitted). You also contend it is obvious the form you were sent was based on my March 3, 2009 *Opinion of the Public Access Counselor 09-FC-38*.

The Department responded to the complaint by letter dated May 6 from Assistant City Attorney Thomas Bodnar. The Department contends it has been using the prescribed form since at least 1999. The Department argues that the APRA allows an agency to require a form; my office has agreed that agencies may require the use of a prescribed form even when a request has been submitted in writing; and it makes good sense for an agency to require each requestor to utilize the same form.

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 inspection or copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency. . .

I.C. § 5-14-3-3(a).

The APRA provides that an agency may provide a form for requests. If the statute allowed an agency to require a request to be made in writing but not necessarily provide the form, subsection (2) would stop with "in writing." But it does not. Instead, the statute provides that at the discretion of the agency, the request must be made in writing *on or in a form provided by the agency*. You argue that a form is not necessary and is an "absurd result." The Department argues that it makes good sense for the agency to require the use of a form. Certainly the law sides with the Department in allowing an agency to require a requestor to submit a request utilizing the form provided by the agency. I.C. § 5-14-3-3(a).

As the Department contends, former counselor O'Connor addressed this issue in *Opinion of the Public Access Counselor 01-FC-34*, opining that requiring a requestor to utilize the agency's form does not constitute a denial of access. I agree. As such, it is my opinion the Department has not violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Thomas Bodnar, City of South Bend