



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Clerk South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 28, 2009

Bruce Brightwell
1212 State Street
New Albany, Indiana 47150

Re: Formal Complaint 09-FC-118; Alleged Violation of the Access to Public Records Act by the Sellersburg Police Department

Dear Mr. Brightwell:

This advisory opinion is in response to your formal complaint alleging the Sellersburg Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaint is enclosed. In my opinion the Department's response may have been untimely under the statute, but the Department did not otherwise violate the APRA.

BACKGROUND

You filed a complaint with this office on May 5, 2009 wherein you allege that the Department has denied you access to copies of records related to usage of the BAC Datamaster instrument. You allege that you submitted the request to the Department on April 17 and as of the date of this complaint have received no response.

The Department responded to the complaint by letter dated May 6 from Detective Sergeant Mark Levesque. The Department indicates that the dispatcher recalls receiving your request and recalls sending you by facsimile transmission correspondence indicating the Department has no information for the date you requested. The Department indicates, though, that the fax machine does not show a record the fax was sent to you. As such, the Department cannot confirm the response was sent. The Department indicates that no records exist which are responsive to your request. Sergeant Levesque further indicates that he spoke with you on May 6 regarding this matter and indicated to you that the Department does not maintain the requested information.

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. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. 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. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you sent the request to the Department on or about April 17. The Department dispatcher believes but cannot confirm she sent a response. If a response was not sent within seven days of receipt of the request, the response was untimely under the APRA. *See* I.C. § 5-14-3-9(b). The Department has now responded to you and indicated the agency does not maintain the records you request. As such, the Town has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department's response may have been untimely under the statute, but the Department did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Detective Sergeant Mark Levesque, Sellersburg Police Department