



STATE OF INDIANA

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June 2, 2009

Michael Crowell
c/o John Emry
62 West Jefferson Street
Franklin, Indiana 46131

Re: Formal Complaint 09-FC-125; Alleged Violation of the Access to Public Records Act by the Cass County Sheriff's Office

Dear Mr. Crowell:

This advisory opinion is in response to your formal complaint alleging the Cass County Sheriff's Office ("Sheriff") 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 Sheriff's response to the complaint is enclosed for your reference. It is my opinion the Sheriff's response was untimely under the APRA but the Sheriff has not otherwise violated the APRA.

BACKGROUND

You allege that you sent to the Sheriff a request for access to records. You provide a copy of the return receipt indicating the request was received on April 23, 2009. You filed the present complaint on May 13, alleging the Sheriff had failed to respond to the request.

The Sheriff responded to the complaint by letter dated May 14 from attorney John Hillis. The Sheriff explains that the response to the request was delayed due to vacation and medical issues. The Sheriff indicates the records you have requested are now available for inspection and copying. The Sheriff is still seeking the video recording you requested. Finally, the Sheriff included a copy of his response sent to you on May 14 from Mr. Hillis.

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 Sheriff's office 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 Sheriff's office 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, the Sheriff received the request on April 23. Since the Sheriff received the request on April 23 but did not respond to you until May 14, the response was not sent within seven days of receipt of the request and as such was untimely under the APRA. *See* I.C. § 5-14-3-9(b). The Sheriff now indicates most of the records you have requested are available for inspection and copying. The Sheriff is currently looking for the remaining record. So long as the Sheriff provides you access to inspect and copy any records it maintains which are responsive to the request, the Sheriff has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Sheriff's response was untimely under the APRA but the Sheriff did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: John Hillis, Hillis, Hillis, Rozzi & Knight, L.L.C.
Sheriff Eugene Isaacs