



STATE OF INDIANA

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March 3, 2009

Richard Johnson
1223 East Colfax
South Bend, Indiana 46617

Re: Formal Complaint 09-FC-38; Alleged Violation of the Access to Public Records Act by the City of South Bend Police Department

Dear Mr. Johnson:

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 denying you access to records. It is my opinion the Department did not violate the APRA.

BACKGROUND

You allege that on January 14, 2009 you filed a verbal complaint against an officer. You further allege that on January 27 you heard from John Collins of the Department who indicated the case was closed. You allege you requested from him a copy of the report and that he denied you access to the report. You filed the present complaint on February 3. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to the complaint by letter dated February 16 from Thomas Bodnar, Assistant City Attorney for the City of South Bend. The Department contends that, pursuant to I.C. § 5-14-3-3(a)(2), the City requires all requests for access to public records to be made in writing. The Department contends it did not receive a written request from you. Further, the Department contends it did not understand any part of your conversation with Lt. Collins to be a request for access to records. In the affidavit of Lt. Collins, he acknowledges that you did request a copy of his report but you did not say it was a public records 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 exempted 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 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). If the requested is made in person or by telephone and the agency does not respond within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A request for inspection or copying must be, at the discretion of the public agency, in writing in or on a form provided by the agency. *See* I.C. § 5-14-3-3(a)(2). Here, the Department contends it has a longstanding policy to require all requests for access to public records to be made in writing. This is an acceptable practice under the APRA, and this office advises agencies to utilize the same procedure for all requests.

If an agency which requires requests to be made in writing receives a verbal request, it is my opinion the agency should indicate to the requester that the request must be made in writing. Here, the officer contends he did not understand any part of your conversation to be a request for access to public records and did not deny you access to the record. He does, though, admit that you requested a copy of his report. Even though you did not invoke the APRA, it is my opinion your query could have reasonably been interpreted as a request for a copy of a public record. It would have been appropriate for the Department to indicate to you that your request must be made in writing.

Mr. Bodnar contends that if your query was indeed a request for access to a public record, it was a verbal request and as such the denial of access was not required to be made in writing. Pursuant to I.C. § 5-14-3-9(c), a denial is only required to be made in writing when the request was made in writing. As such, if Lt. Collins interpreted the query as a request for access to records, his denial was not required to be made in writing, and he was not required to state the specific exemptions authorizing the Department to withhold all or part of the record. Such a statement would be required if the request were made in writing. *See* I.C. § 5-14-3-9(c).

Mr. Bodnar provides a considerable amount of detail about the substance of the specific record you have requested. Whether the record is required to be disclosed is not the issue here, but it is my opinion Mr. Bodnar's analysis regarding the record is in line with the APRA and the Department can bear the burden of proof to sustain the denial.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive style with a large initial 'H'.

Heather Willis Neal
Public Access Counselor

Cc: Thomas Bodnar, City of South Bend