



STATE OF INDIANA

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April 20, 2012

Brian Baxter
DOC 937087
P.O. Box 1111
Carlisle, Indiana 47838-1111

Re: Informal Inquiry 12-INF-19; Requirements of an agency in providing records pursuant to the APRA

Dear Mr. Baxter:

This is in response to your informal inquiry regarding the requirements of an agency in responding to a request made pursuant to the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* Andrea Newsom-Brandes responded to your informal inquiry on behalf of the Indianapolis Metropolitan Police Department ("IMPD").

BACKGROUND

Your inquiry pertains to a request for records that you submitted to the IMPD. On or about January 15, 2012, you submitted a written request to the IMPD for all records in the IMPD's possession regarding IMPD Case number MP01259965 and IP01104747. On January 12, 2012, the IMPD responded to your request and provided that it was unable to find any records that were responsive and asked that you provide more specific information in order to allow the IMPD to conduct a further search.

On January 30, 2012, you replied in writing to the IMPD's response and provided more specific information. On February 10, 2012, the IMPD confirmed receipt of your additional correspondence, received on February 6, 2012, and that it would initiate a further search of its records. The IMPD advised that you were free to contact the agency in the interim if you needed further assistance. On March 6, 2012, you provided written correspondence to the IMPD regarding the status of its search. On March 13, 2012, the IMPD responded to your correspondence and provided that it was continuing its search for records and that upon completion, you would be notified and provided with all records responsive to your request, minus any applicable exceptions. You inquire whether the IMPD is required pursuant to the APRA to provide an actual date that the search will be completed or a date to advise you of the status of its search.

Ms. Newsom confirmed the factual outline regarding your previous correspondence and request for records submitted to the IMPD. Ms. Newsom advised that the APRA does not require that the agency provide the requestor with the date a search for records will be complete or a date to advise the requestor of the status of the search. The APRA provides that all records must be disclosed in a reasonable period of time. The Indianapolis Office of Corporation Council presently has a significant volume of pending records requests, particularly requests seeking records from the IMPD. As the records of the IMPD generally contain investigatory or other protected information, the request may require additional processing time. Ms. Newsom did advise that the IMPD has determined that it has no records in its possession regarding your request for laboratory/forensic testing or the examination/autopsy reports from the specific cases you requested. The records may be in the custody of other public agencies. The IMPD estimates that all other records that would be responsive to your request would be provided within the next three (3) weeks.

ANALYSIS

The public policy of the APRA states that “(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.” *See* I.C. § 5-14-3-1. Accordingly, any person has the right to inspect and copy a public agency’s records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the

APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

In response to your specific inquiry, the APRA does not require an agency to provide a requestor with a specific date the search for records will be completed or provide the requestor with a status update regarding the search at specific, pre-determined time intervals. An agency is required to acknowledge a written request for records within seven (7) days of its receipt. After acknowledging your request, the APRA provides that all records must be produced in a reasonable period of time. As applicable here, I would note that the IMPD responded to all of your inquiries regarding the status of your request within one week's time and in addition, the IMPD advised you to feel free to contact the agency if you had any questions or required additional assistance. As the IMPD has provided that its search and production of records will be complete within the next three (3) weeks, I trust that this will satisfy your concerns regarding its response.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Andrea Brandes Newsom