



STATE OF INDIANA

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October 5, 2009

Messrs. Leroy Brown and Ben Kindle
4972 W. Sims Lane
Monrovia, IN 46157

Re: Formal Complaint 09-FC-202; Alleged Violation of the Access to Public Records Act by Gregg Volunteer Fire Department

Dear Messrs. Brown and Kindle:

This advisory opinion is in response to your formal complaint alleging Gregg Volunteer Fire Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to records. For the following reasons, my opinion is that the Department violated the APRA when it failed to respond to your request for public records, but I understand that the Department will produce responsive records as soon as possible after it converts to a new data storage system.

BACKGROUND

In your complaint, you allege that on August 14, 2009, you submitted a request for public documents to Chief Lawrence Hayes of the Department. In it, you requested the emergency medical services ("EMS") runs for 2009. You specifically sought the date of each run, address of the incident, type of run (fire or EMS), and township of the run. You further allege that as of September 3, 2009, the Department had not responded to your request.¹

Chief Hayes' response to your complaint is enclosed for your reference. Chief Hayes states that the Department's production of your records has been delayed by his out of town travel and the Department's transition to a new software system. Until the system's conversion is complete, the Department is unable to access accurate information in response to your request. Chief Hayes has assured me that the Department will produce all responsive records as soon as practicable after the conversion is complete.

ANALYSIS

¹ Your complaint also includes allegations regarding the use of fire department equipment. The subject matter of these additional allegations is outside of the scope of the public access laws and, consequently, will not be addressed in this advisory opinion. I.C. §5-14-4-10.

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 does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the public records are exempt 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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.

Because the Department did not respond to your request, it is deemed denied under section 9 of the APRA. If the Department maintained its denial, I do not believe it would be able to justify its withholding of the information. The Department, however, intends to produce the responsive information to you as soon as is practicable. Assuming that occurs, I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, my opinion is that Department improperly denied your request under the APRA but will produce the responsive documents to you as soon as practicable.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Chief Lawrence Hayes IV, Gregg Volunteer Fire Department