



# STATE OF INDIANA

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November 13, 2009

Mr. Gary Otto  
DOC # 905901  
P.O. Box 600  
Pendleton, IN 46064

*Re: Formal Complaint 09-FC-237; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, it is my opinion that IMPD did not violate the APRA.

## BACKGROUND

In your complaint, you allege that IMPD violated the APRA by denying you access to a police report regarding a break-in at your apartment. My office forwarded a copy of your complaint to IMPD. City of Indianapolis Chief Deputy Corporation Counsel and Public Access Counselor Samantha Karn responded on behalf of IMPD. Ms. Karn states that IMPD responded to your request within the required seven (7) day timeframe for public agencies to respond to written records requests. Ms. Karn further responds by asserting that "IMPD simply has no documents responsive to [your] 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. IMPD does not dispute that it constitutes 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 IMPD's public records 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).

Here, IMPD claims that it does not have any police report regarding the incident you described. If IMPD has no records responsive to your request, it did not violate the APRA by denying your request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [Agency] could not be required to produce a copy....”).

#### CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

Cc: Samantha S. Karn, City of Indianapolis