



STATE OF INDIANA

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December 8, 2009

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

Re: Formal Complaint 09-FC-261; Alleged Violation of the Access to Public Records Act by the Speedway Police Department

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Speedway Police Department ("SPD") 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 SPD did not violate the APRA.

BACKGROUND

In your complaint, you allege that SPD 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 SPD. Major Chuck Upchurch responded on behalf of SPD. Maj. Upchurch states that SPD has checked its records and confirmed that it has none of the records that you seek. His response is enclosed for your reference.

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. SPD 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 SPD'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).

SPD claims that it does not have any police report regarding the incident you described. If SPD 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 SPD 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: Maj. Chuck Upchurch