



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 9, 2009

Mr. Clay M. Howard
P.O. Box A
New Castle, IN 47362

Re: Formal Complaint 09-FC-266; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Jail

Dear Mr. Howard:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Jail (the "Jail") 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 the Jail did not violate the APRA.

BACKGROUND

In your complaint, you allege that the Jail violated the APRA by failing to respond to your October 21, 2009, request for access to public records. You filed your complaint with this office on November 3, 2009. As of that date, you had not yet received a response from the Jail.

My office forwarded a copy of your complaint to the Jail. The response of Tracy A. Brown of the Tippecanoe County Sheriff's Office is enclosed for your reference. Ms. Brown acknowledges that the Jail received a request from you on October 29th. The Jail mailed a response to you on November 3rd and enclosed your requested records with that response.

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 Jail 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 the Jail'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).

Under the APRA, if a 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). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, the Jail responded to your mailed request within five (5) days of receipt. Consequently, it is my opinion that the Jail did not violate the APRA.

I note that public agencies are required to respond to an APRA request within seven (7) days of *receiving* the request. In the future, please allow a public agency sufficient time to respond and for that response to reach you via the mail before making a complaint with this office.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Tracy A. Brown