



STATE OF INDIANA

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December 16, 2009

Mr. Ben Kindle
4972 W. Sims Lane
Monrovia, IN 46157

Re: Formal Complaint 09-FC-270; Alleged Violation of the Access to Public Records Act by the Gregg Volunteer Fire Department

Dear Mr. Kindle:

This advisory opinion is in response to your formal complaint alleging the Gregg Volunteer Fire Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, my opinion is that the Department violated the APRA.

BACKGROUND

In your complaint, you allege that you sent a request to the Department in which you requested multiple sets of records. The Department produced a sizable portion of the documents in response to your request, but you believe the response is incomplete. My office forwarded a copy of your complaint to the Department. As of the date of this opinion, we have not received a 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 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. When a request is made in writing and the agency denies the request, the agency must deny the request in writing and must 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. I.C. § 5-14-3-9(c). If the Department failed to do so, it violated section 9(c) of the APRA. In that case, I encourage the Department to either allow you to inspect and copy the documents or cite a specific statutory basis for refusing to do so.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated section 9(c) of the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Chief Larry Hayes IV, Gregg Volunteer Fire Department