



STATE OF INDIANA

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August 31, 2010

Mr. David Pannell, DOC # 963265
Indiana State Prison
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 10-FC-175; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Pannell:

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.* I have enclosed IMPD's response for your reference.

BACKGROUND

According to your complaint, on July 29, 2010, you submitted a formal request for access to public records to Chief Paul Ciesielski of IMPD. In your request, you sought access to "DHC Reports" submitted by certain IMPD officers concerning an automobile accident that occurred on February 17, 1995. On July 2nd, you received a letter from City of Indianapolis Chief Deputy Corporation Counsel Andrea Brandes. In her letter, Ms. Brandes informed you that IMPD would conduct a search for responsive records and any non-confidential records would be made available to you.

My office forwarded a copy of your complaint to IMPD. In response, Ms. Brandes notes that she responded to your request on July 2nd, which was within three days of receiving your request. Ms. Brandes also states that neither IMPD nor the City of Indianapolis maintains records 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 is a “public agency” under 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 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. Here, IMPD responded to your written request within the required seven (7) day period.

With regard to the specific records you requested, IMPD claims it no longer maintains them. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the 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....”). The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. See I.C. § 5-14-3-4(e). Thus, if the records you requested do not exist because they were disposed of in accordance with an applicable retention schedule, IMPD did not violate the APRA.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Andrea Brandes