



STATE OF INDIANA

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September 16, 2010

Mr. Bryan K. Bullock
7863 Broadway, Suite 222
Merrillville, IN 46410

*Re: Formal Complaint 10-FC-183; Alleged Violation of the Access to
Public Records Act by Gary Police Department*

Dear Mr. Bullock:

This advisory opinion is in response to your formal complaint alleging the Gary Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Department, but as of today we have not received a response.

BACKGROUND

In your complaint, you allege that you requested a copy of an incident report from the Department on July 21, 2010. As of the date of your complaint, August 12th, you had not received a response to your request.

ANALYSIS

The public policy of the APRA states that "(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 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 records are excepted 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).

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, if the agency failed to respond to your written request within seven (7) days of receiving it, it is deemed denied. *Id.*

When a request is made in writing, as yours was, and an agency denies the request, the agency must also 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). Thus, if the Department neither responded to your request nor provided you with a written denial citing a basis for withholding the incident report you requested, the Department violated the APRA.

I encourage the Department to either provide you with the incident report or cite a legal basis under the APRA or some other statute for withholding it. If you believe the Department continues to deny you access in violation of the APRA following the issuance of an advisory opinion from this office, you may file a court case pursuant to Ind. Code § 5-14-3-9(e) to compel production of the records.

CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the APRA if it failed to respond to your request.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Susan Severtson