



# STATE OF INDIANA

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September 20, 2010

Mr. Derek L. Morris  
DOC # 104145  
3038 W. 850 S.  
Bunker Hill, IN 46914-9810

*Re: Formal Complaint 10-FC-186; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Morris:

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.* A copy of IMPD's response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you requested public records from IMPD on August 2, 2010. As of August 16th, you had not yet received a response from IMPD.

In response to your complaint, City of Indianapolis Chief Deputy Corporation Counsel and Public Access Counselor Andrea Brandes acknowledges that IMPD failed to respond to your request within seven (7) days. However, Ms. Brandes states that IMPD has since provided fifty-two (52) pages of responsive records to you via U.S. Mail. IMPD believes that the amount of time it took to produce the records to you was reasonable because your request sought a detailed list of records concerning a large number of individuals and records that are several years old. Moreover, your request sought the "last two most recent reports" for multiple persons or multiple reports for various persons after a certain date. The form of this latter request required IMPD personnel to spend additional administrative time locating responsive records than if you had identified the records with more specificity.

## 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. IMPD does not contest 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 IMPD’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). 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 acknowledges that it failed to respond to your written request within the required seven (7) days.

The APRA does not set any time periods for *producing* public records, merely for responding to the request.” *Opinion of the Public Access Counselor 02-FC-09* (O’Connor; advising that an agency’s failure to produce requested documents within five days was not a denial under the APRA) (emphasis added). The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Here, it appears that you requested voluminous records that required IMPD to retrieve them from various sources. In my opinion, IMPD’s production of 54 pages of responsive records on or before September 13th in response to your August 2nd request was reasonable under such circumstances.

CONCLUSION

For the foregoing reasons, it is my opinion that the School 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 style with a large, sweeping initial 'A'.

Andrew J. Kossack  
Public Access Counselor

Cc: Andrea Brandes