



STATE OF INDIANA

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November 17, 2010

Mr. Jonathan Farley Washington
DOC # 174831
5501 S. 1100 W.
Westville, IN 46391

Re: Formal Complaint 10-FC-248; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department

Dear Mr. Washington:

This advisory opinion is in response to your formal complaint alleging the Lake County Sheriff's Department ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Sheriff's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on September 1, 2010, you submitted a records request to the Sheriff at 2900 W. 93rd Ave., Crown Point, IN 46307. As of September 30th, you had not received a response to your request.

In response to your complaint, the Sheriff's attorney, John Kopack, avers that the Sheriff never received your request. Enclosed with Mr. Kopack's response is an affidavit from Cmdr. William Paterson. In it, Cmdr. Paterson testifies that the Sheriff did not receive your request. He notes that you did not send your request to the correct address for the Sheriff's office and the Lake County Police Department, which is 2293 North Main Street, Crown Point, IN 46307.

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 Sheriff 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 the

Sheriff'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, the Sheriff asserts it did not receive your request. If the Sheriff did receive your request, the Sheriff had a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). However, while a public agency has a duty to respond to a written request for access to records within seven days of receiving the request, an agency cannot respond to a request it did not receive. Therefore, if the Sheriff did not receive your request because you sent it to the incorrect address, the Sheriff did not violate the APRA by not responding. *See Opinion of the Public Access Counselor 09-FC-44.*

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: John M. Kopack