



# STATE OF INDIANA

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December 8, 2010

Mr. Grover C. McPhaul  
1815 Nichol Ave.  
Anderson, IN 46016

*Re: Formal Complaint 10-FC-279; Alleged Violation of the Access to Public Records Act by the Madison County Sheriff's Department*

Dear Mr. McPhaul:

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

## BACKGROUND

According to your complaint, on August 30, 2010, you requested records from the Department pertaining to disciplinary actions of Department employees. You acknowledge that the Department responded to your request, but as of November 3rd, you had not received the records.

My office forwarded a copy of your complaint to the Department. Legal Deputy A. Howard Williams responded to your complaint on behalf of the Department. Mr. Williams states that the Department attempted to respond to your request, but the response was returned as undeliverable. He enclosed in the Department's response a copy of a certified mail envelope that shows it was returned to sender on October 29, 2010. Mr. Williams also enclosed copies of records that appear to be 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. The Department does not dispute that it is a public agency for the purposes of the

APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy Department's public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, 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, the Department responded to your request in a timely manner and informed you that an additional response would be forthcoming.

There are no prescribed timeframes when the records must be physically produced by a public agency. 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.

Here, the Department attempted to send you responsive records, but the Department's package was returned as undeliverable on October 29th. The Department used the address you provided to it. In my opinion, the Department acted reasonably by attempting to send you a response at the address you provided. In the future, if you have a pending records request with an agency and your address changes, I encourage you to inform the agency of the change to avoid this problem. In any event, I trust the Department's response satisfies your complaint.

#### CONCLUSION

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

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: A. Howard Williams