



STATE OF INDIANA

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March 9, 2010

Mr. Tracey L. Wheeler
DOC # 140083
4490 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 10-FC-32; Alleged Violation of the Access to Public Records Act by the Terre Haute Police Department

Dear Mr. Wheeler:

This advisory opinion is in response to your formal complaint alleging that the Terre Haute Police Department ("Department") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Department's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on February 11, 2010, you submitted a request to the Department requesting records pertaining to certain criminal cases. You further allege that as of the date of your complaint, the Department had neither produced the requested records nor cited any "legal exemption" for failing to produce the records.

In response to your complaint, Chou-il Lee, the city attorney who responded on behalf of the Department, maintains that the Department never received your request. Further, Attorney Lee states that if you are still interested in receiving the requested information, the city will review your requests and respond accordingly. However, to the extent that you seek information regarding Detective Denzil Lewis, a Terre Haute police officer and employee of the City of Terre Haute, the city must comply with the applicable rules in section 4 of the APRA regarding public employee personnel files.

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 subject to the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the 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).

A request for access to public 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 twenty-four (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. When the request is made in writing and the agency denies the request, the agency must 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).

The Department maintains that it did not receive your request. If the Department did not receive your request, it was not obligated to respond. If the Department did receive your request and failed to respond in accordance with section 9 of the APRA, it violated the APRA.

It is my understanding that the Department will consider and respond to your request if you so desire. I note that the Department is correct that it is not required to produce personnel file information beyond that which must be disclosed pursuant to section 4(b)(8)(A) - (C). To the extent that an agency persists in its denial of access following the issuance of an advisory opinion from this office, you are free to pursue your remedies in court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the Department received your request and failed to respond in accordance with section 9 of the APRA, it violated the APRA. I trust the Department's assurances that it will respond to your request resolve this complaint.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Chou-il Lee