



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 13, 2010

Mr. Tracey L. Wheeler
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 10-FC-95; 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 the Terre Haute Police Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Department's response is enclosed for your review.

BACKGROUND

In your complaint, you allege that you requested records from the Department on March 18, 2010. As of the date of your complaint on March 25th, you had received no response from the Department.

In the Department's response from City Attorney Chou-il Lee, Mr. Lee maintains that he responded to your request within the applicable seven-day timeframe in accordance with the APRA, but his initial response was returned to him as undeliverable. Mr. Lee enclosed records of that response in his response to me. Subsequently, Mr. Lee sent a second response to you at the correctional facility's address which was not returned to him, so he presumes that you received that response. Finally, Mr. Lee states that he is in the process of fulfilling your request and will send you responsive documents -- if any -- upon receipt of payment for applicable copy fees.

ANALYSIS

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). In my opinion, your complaint in this matter was submitted prematurely. Because the

APRA allows public agencies seven days from the date of receipt to respond to records requests, in my opinion you did not allow the Department sufficient time to respond to your request when you filed a complaint with this office seven days after you *sent* your request. In the future, please allow public agencies at least ten (10) days to respond to your request before you file a complaint with this office.

In any event, the Terre Haute city attorney informs me that he is compiling responsive records at this time in response to your request. If and when he identifies records that might be released to you, he will contact you regarding any applicable copy fees. Upon receipt of those fees, he will release responsive records to you. I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department 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, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Attorney Chou-il Lee