



STATE OF INDIANA

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July 6, 2011

Mr. Tony J. DeMarco
DOC # 158821
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 11-FC-139; Alleged Violation of the Access to Public Records Act by the Warsaw Police Department

Dear Mr. DeMarco:

This advisory opinion is in response to your formal complaint alleging the Warsaw 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 reference.

BACKGROUND

In your complaint, you allege that on May 17, 2011, you requested records from the Department. On May 19th, you received a response from the Department informing you that any requests for copies must be addressed through your attorney and/or the courts.

In response to your complaint, Department Executive Secretary Lynne LaFollette states that on May 16th, the Department sent you copies of police reports pertaining to you in response to your May 9th request for the same. The Department did not send you copies of the records you sought in your May 17th request (i.e., search warrants and returns) because the Department does not maintain those records. Instead, the Department referred you to the court system of Kosciusko County, which maintains the original records you seek.

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 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 Department's public records during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Department denied your second records request because it is not the custodian of the search warrants and returns that you sought. If the Department does not maintain those records, the Department did not violate the APRA by referring you to another agency that might possess such documentation. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy....").

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if it has no records responsive to your request for search warrants and returns.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Lynne LaFollette