



STATE OF INDIANA

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February 9, 2011

Mr. Michael J. Shepard
DOC # 181080
Putnamville Correctional Facility
1946 W. U.S. Hwy. 40
Greencastle, IN 46135

Re: Formal Complaint 11-FC-18; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Shepard:

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

BACKGROUND

In your complaint, you claim that you mailed a records request to the ISP on December 13, 2010. As of January 7, 2011, you had not received a response to your request. You further claim that the ISP is "withholding the following records in an arbitrary and capricious manner" and list several categories of records.

In response to your complaint, ISP Lieutenant and Legal Counsel Mark Carnell initially notes that this is the third complaint that you have filed against the ISP since November of 2010. *See Ops. of the Public Access Counselor 10-FC-245; 10-FC-275.* He states that your recent requests to the ISP are largely duplicative of requests that were addressed in those previous opinions, span in excess of 21 pages, and contain mostly requests for investigations rather than public records. Other portions of your requests seek records that do not exist, or that have been addressed in previous advisory opinions from this office.¹ Lt. Carnell acknowledges that he did not respond to some of your requests, but he failed to do so because they were duplicative and appeared to be complaints and requests for investigations rather than reasonably particular records

¹ To the extent that this office has already addressed many of the allegations contained in your current complaint in previous opinions, I decline to examine them again in this opinion. I also decline to address allegations that the ISP failed to conduct an investigation because I have no authority to opine on such issues. *See I.C. § 5-14-4-10.*

requests. He concedes that he initially overlooked your new request for access to ISP daily log information of its Evansville post because that request was contained within a long and convoluted document that failed to request such records with reasonable specificity.

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 ISP is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the ISP’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

To the extent you have repeatedly requested the same records from the ISP, in my opinion the ISP does not violate the APRA by refusing to respond. *See Op. of the Public Access Counselor 10-FC-86*. If a public agency has responded to a records request, it has satisfied the APRA’s obligation to respond under section 9. It is nonsensical and unnecessary to require public agencies to repeatedly issue identical responses to identical public records requests. Consequently, to the extent that you submitted duplicative records requests or requests for records that have previously been the subject of advisory opinions from this office, the ISP did not violate the APRA by refusing to respond to them.

Moreover, if the ISP does not maintain other records you requested, the ISP did not violate the APRA by failing to produce them. As you know from previous complaints, “the 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....”).

The ISP acknowledges that it failed to respond to your request for daily log records of the Evansville post, but argues that that request was “easily overlooked, given the tone, nature, and volume of [your] correspondence” with the ISP. I cannot excuse any agency’s failure to respond to a public records request. However, I also decline to interpret the APRA to require an agency to dig through each and every lengthy communication that it receives in search of public records requests, particularly where a requester has repeatedly submitted duplicative requests and numerous voluminous documents containing content largely devoid of public records requests. A records request that is hidden within other material in such a way as to make it difficult for public agencies to recognize that it is a public records request has not been submitted with reasonable particularity. Public records requests should be submitted in such a way as to (1) clearly notify the public agency that the document submitted is, in fact, a request for

public records; and to (2) identify with reasonable particularity the records sought. *Id.* That said, I trust that the ISP will provide you with the daily log records upon receipt of applicable copy fees and postage. *See Op. of the Public Access Counselor 05-FC-264* (“The APRA does not require that an agency mail records to a requester free of charge. Therefore, I suggest that you make arrangements to pay the postage for the records you request of the [agency].”).

CONCLUSION

For the foregoing reasons, it is my opinion that -- upon receipt of applicable copy fees and postage -- the ISP should disclose to you the daily log records that you requested. The ISP has not otherwise violated 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: Lt. Mark Carnell