



STATE OF INDIANA

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August 29, 2011

Mr. Jeffery L. McCrory
5124 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 11-FC-214; Alleged Violation of the Access to Public Records Act by the Madison County Detention Center

Dear Mr. McCrory:

This advisory opinion is in response to your formal complaint alleging the Madison County Detention Center (“Center”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Andrew Williams, Jail Commander, responded on behalf of the Center. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on July 27, 2011, you submitted a written request to the Center for records documenting any attorney visits that you received while housed at the Center from June 24, 2009 through June 19, 2010. As of August 24, 2011, the date you filed your complaint with the Public Access Counselor’s Office, you maintain that you have not received a response from the Center.

In response to your complaint, Mr. Williams advised that the Center did not receive your July 27, 2011 request. However, the Center did receive an identical records request from you on August 24, 2011. Mr. Williams advised that the Center does not specifically log attorney visits. The Madison County Court Administrator has placed a sign-in book in the lobby of the building with instructions that all public defenders sign-in to document the visit. Mr. Williams has provided to you copies of the sign-in book from June 24, 2009 through June 19, 2010. Mr. Williams has further provided that he conducted a search of the Center’s daily logs for your last name and provided all records responsive to your request.

ANALYSIS

The public policy of the APRA states that “(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.” See I.C. § 5-14-3-1. The Center is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Center’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

The Center maintains that it did not receive a request from you. If the Center did not receive your request, it was not obligated to respond to it. As previous Public Access Counselor’s have provided, the Public Access Counselor is not a finder of fact. See *Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Center received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. See I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. See I.C. §5-14-3-9(c). If the Center did receive your request and did not respond to it within these timeframes, it violated the APRA by failing to provide you with a response within seven (7) days that satisfied the requirements of section 9(c) of the APRA.

As the Center has now received and responded to an identical records request from you that was sent after you filed your formal complaint, I trust that the Center’s response is in satisfaction of your complaint. I will note that 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....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. See *Opinion of the Public Access Counselor 10-FC-56*.

CONCLUSION

For the foregoing reasons, it is my opinion that the Center did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage
Public Access Counselor

cc: Andrew Williams