



STATE OF INDIANA

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December 20, 2011

Steven L. Robbins
DOC 145839
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 11-FC-292; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Robbins:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have submitted a series of written requests to the Department for a certified copy of Incident History Detail 4242 and CAD Report I-02132079. Although it is not entirely clear from your formal complaint, you further allege that the Department has denied your requests by taking an unreasonable amount of time to respond to the request. You make further references to an alleged violation of the APRA in regards to certain copy fees sought by the Department.

In response to your formal complaint, Ms. Newsom advised that the Department received multiple duplicate requests from you beginning on September 30, 2011. In some of the requests that were submitted, you asked the Department to certify the document that you had provided and asked that the certified copy be returned to you. You enclosed with your November 2, 2011 request an unsolicited check for \$0.32. The Department responded to all of your requests in a timely manner, acknowledging their receipt. The CAD report you sought from 2002; the Department no longer maintains a copy of the report. You were advised of this in a November 3, 2011 written correspondence from Ryan Hendershot. As to your request for "Incident History Detail 4242", the request was not reasonably particular as required by the APRA. The Department has been unable to find any records that are responsive to your request, and

asked in an October 12, 2011 written correspondence that you clarify your request. The Department has yet to receive any further communication from you clarifying 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 Department 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 Department’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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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. Here, the Department has provided that it responded to each of your requests within the timelines provided by section 9 of the APRA.

Generally, 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....”). The Department has provided that as to your request for CAD Report I-02132079, it no longer maintains a copy of the record. The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). As long as the CAD Report you seek was disposed of in accordance with an applicable retention schedule, the Department did not violate the APRA by failing to maintain them beyond the retention period. *See Opinion of the Public Access Counselor 11-FC-133*.

The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not

defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally IC 5-14-3-1; Opinion of the Public Access Counselor 02-FC-13*. Here your request for “Incident History Detail from 4242” was not reasonably particular and the Department sent you written correspondence on October 12, 2011 in an attempt to clarify your request. The Department has provided that you have not responded to its October 12, 2011 correspondence. You should provide further information and/or clarify your request to the Department so that it might conduct a further search of its records to determine if there are any records responsive to it. I would note that should the Department find records that are responsive to your request; the APRA does not require a public agency to certify records. *See Opinion of the Public Access Counselor 06-FC-65; 07-FC-228; 08-FC-189*.

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, appearing to read "J. Hoage". The signature is written in a cursive, flowing style.

Joseph B. Hoage
Public Access Counselor

cc: Andrea Brandes Newsom