



STATE OF INDIANA

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March 14, 2011

Ms. Jamie Grabert
P.O. Box 2244
Evansville, IN 47728

Re: Formal Complaint 11-FC-50; Alleged Violation of the Access to Public Records Act by the Evansville Fire Department

Dear Ms. Grabert:

This advisory opinion is in response to your formal complaint alleging the Evansville Fire Department ("EFD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the EFD. The response by EFD Executive Secretary Cathleen Tamez is enclosed for your reference.

BACKGROUND

According to your complaint, on February 7, 2011, you hand-delivered a records request to the EFD. On February 8th, you received a letter from EFD Chief Keith Jarboe, which informed you that the EFD was in the process of retrieving and reviewing responsive records and would provide you with a fuller response on or before April 8, 2011. On February 10th, you filed this complaint alleging that the EFD's timeframe of nearly 60 days to respond was unreasonable.

In response to your complaint, Ms. Tamez wrote to you on February 25th to inform you that it had located 42 pages of responsive records that could be picked up from the EFD Administration Building during business hours. On March 2nd, Ms. Tamez sent you a second letter informing you of the records' availability. As of March 7th, Ms. Tamez stated that you had not yet picked up the records.

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

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). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). 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. Thus, the EFD complied with the APRA if it acknowledged your hand-delivered request by responding the following day.

Regarding your allegation that the EFD's proposed timeframe was unreasonable, there are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. The EFD does not explain why it required from February 8, 2011, until April 8, 2011, to produce the records it has now made available to you. Consequently, it is my opinion that the EFD has not yet sustained its burden of proof to show that such a time period was reasonable.

That said, I always encourage requesters who take issue with an agency's proposed production timeframe to contact the agency and request a more expeditious response. Here, the EFD ultimately made your requested records available by February 25th, which was within three weeks of your request and much sooner than the anticipated April 8th production date. If a requester fails to contact an agency to inform it that a proposed production date is unacceptable, the agency has no way of knowing that a more prompt response is necessary. In my opinion, the EFD's prompt production of your requested records after the filing of your formal complaint substantially complied with the APRA if the EFD had no prior notice that you objected to its original proposal of April 8th.

CONCLUSION

For the foregoing reasons, it is my opinion that the EFD has not yet sustained its burden of proof to demonstrate that the proposed production date was reasonable, but the EFD has otherwise complied with the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Cathleen Tamez