



STATE OF INDIANA

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March 21, 2011

Mr. David R. Thompson
111 Monument Circle, Suite 3540
Indianapolis, IN 46204

Re: Formal Complaint 11-FC-53; Alleged Violation of the Access to Public Records Act by the City of Indianapolis Department of Public Safety

Dear Mr. Thompson:

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis (the "City") Department of Public Safety ("DPS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* City of Indianapolis Chief Deputy Corporation Counsel and Public Access Counselor Andrea L. Brandes' response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a records request to DPS on February 9, 2011, by hand-delivery. As of February 17th, you had not yet received a response. You contacted DPS via telephone to follow up on the request, but DPS informed you that "they had nothing to do with [APRA] requests" and referred you to the Office of Corporation Counsel ("OCC"). When you contacted OCC, an operator there routed you to "someone's voicemail."

In response to your complaint, Ms. Brandes states that the City responded to your request on February 14th, which she acknowledges is outside of the timeframe contemplated by the APRA for responses to hand-delivered records requests. Such response advised you that no records exist that are responsive to your request.

ANALYSIS

Under the APRA, 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. Here, the City acknowledges that DPS received your hand-delivered request on February 9th and responded to it on February 14th. Thus, DPS did not respond to the request in accordance with section 9 of the APRA.

That said, DPS did not otherwise violate the APRA if it has no records responsive to your request. The APRA does not require public agencies to produce or release records that they do not maintain. “[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 DPS should have responded to your request within 24 hours in accordance with section 9 of the APRA. DPS did not otherwise violate the APRA if the records you requested do not exist.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Andrea L. Brandes