



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 18, 2012

Eric S. McCoy
5501 S. 1100 W
Westville, Indiana 46391

Re: Formal Complaint 12-FC-09; Alleged Violation of the Access to Public Records Act by the Indiana Department of Insurance

Dear Mr. McCoy:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Insurance ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Holly Williams, Attorney, responded on behalf of the Department. Her response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(3).

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department on or about December 12, 2011 for the following records:

- a. Criminal complaint forms, templates, or example types;
- b. Steps needed to be taken to file a criminal complaint with the Department;
- c. Who criminal complaints may be filed on;
- d. How a police officer's bond may be revoked; and
- e. Information on whether or not an officer was operating on duty without a bond.

On December 19, 2011, the Department responded in writing to your request and provided it did not maintain any records that were responsive to your request. The Department advised that your local prosecutor would likely maintain the records that you were seeking.

In response to your formal complaint, Ms. Williams advised that the Department is an administrative agency tasked with protecting Indiana's insurance customers by regulating and monitoring the financial strengths and market conduct activities of insurance companies and insurance agents. As to your request, the Department does not maintain any records that are responsive to your request. The majority of your request

dealt with requests for records related to filing a criminal complaint, which the Department does not maintain. Alternatively, your request sought advice, rather than records, which is not governed by the APRA.

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 responded to your request within the timelines provided by section 9 of the APRA.

The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request. *Opinion of the Public Access Counselor 04-FC-38*.



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If a public agency does not maintain any records responsive to a public records request, the agency does not violate the APRA by denying the request. *See Opinions of the Public Access Counselor 01-FC-61 and 08-FC-113.* A public agency is not required to conduct research or create a new record in order to satisfy a public records request. *See Opinions of the Public Access Counselor 03-FC-146; 05-FC-25; 10-FC-56.* The Department has provided, regardless of whether you were seeking actual records or advise, that it does not maintain any records that were responsive to your requests. Therefore, it is my opinion that the Department did not violate the APRA in responding to your request.

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 "Joe Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Holly Williams