



STATE OF INDIANA

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September 10, 2012

Brian Keith Baxter
DOC 937087
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-229; Alleged Violation of the Access to Public Records Act by the Marion County Forensic Services Agency

Dear Mr. Baxter:

This advisory opinion is in response to your formal complaint alleging the Marion County Forensic Services Agency ("Agency") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Michael M. Medler, Laboratory Director, responded on behalf of the Agency. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Agency on August 2, 2012. As of August 16, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Agency has failed to respond to your request.

In response to your formal complaint, Mr. Medler advised that the Agency received your request for records on August 6, 2012, to which it responded in writing and provided all records that were responsive on August 9, 2012.

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 Agency 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 Agency'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). The seven-day time period for the agency to respond does not commence until the agency receives the request. *Id.* 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 Agency advised that it received your written request for records, dated August 2, 2012, on August 6, 2012. On August 9, 2012, the Agency provided all records that were responsive to your request. Thus, it is my opinion that the Agency complied with the requirements of section 9 in responding to your request. The Agency further provided that a “GSR” analysis was not performed on either of the cases that were listed in your request. Generally, if a public agency has no records responsive to a public records request, the agency generally 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*. As such, it is my opinion that the Agency did not violate the APRA by failing to produce records that it was not legally obligated to maintain.

CONCLUSION

For the foregoing reasons, it is my opinion that the Agency did not violate the APRA.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Michael M. Medler