



STATE OF INDIANA

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June 13, 2013

Mr. Dustin L. Brewer
DOC 209684
1946 W. US Highway 40
Greencastle, IN 46135

Re: Formal Complaint 13-FC-152(a); Alleged Violation of the Access to Public Records Act by the Washington County Sheriff's Department

Dear Mr. Brewer:

This amended advisory opinion is in response to your formal complaint alleging the Washington County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Thomas Scifres, Attorney, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Department on or about May 3, 2013. As of May 23, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Department.

In response to your formal complaint, Mr. Scifres advised that the Department has no record of receiving your request. As the Department is now aware of your request, it has promptly commenced the process of providing all records responsive to it.

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 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). 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. It is my opinion that the Department acted contrary to the requirements of section 9(b) of the APRA if it failed to respond in writing within seven (7) days of the receipt of your request.

The Department maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Department received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Department received your request and did not respond to it within these timeframes, the Department acted contrary to the APRA. However, if the Department did not receive your request, it was not obligated to respond to it. As the Department is now aware of your request and commenced gathering all records responsive to it, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department did not violate the APRA if it never received your request. As the Department is now aware of your request and commenced gathering all records responsive to it, I trust that this is in satisfaction of your formal complaint.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Sheriff Claude Combs, Thomas Scifres