



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317) 234-0906  
Fax: (317) 233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

July 24, 2013

Mr. Aaron Ross  
DOC 196309  
4490 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 13-FC-181; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Ross:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Samantha DeWester, City Attorney and Public Access Counselor, responded on behalf of the Department. Her 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 April 24, 2013. As of June 27, 2013, the date you filed your formal complaint with the Public Access Counselor’s Office, you allege that the Department has yet to provide any records responsive to your request in violation of section 3(b) of the APRA.

In response to your formal complaint, Ms. DeWester acknowledged that the Department received your request on April 24, 2013. The Department acknowledged the receipt of your request on April 25, 2013. You thereafter submitted an additional request on May 17, 2013, which was properly acknowledged in writing on May 21, 2013. On April 26, 2013, the Department provided you, via U.S. Mail, any and all records responsive to your April 24, 2013. The Department had been waiting to receive the respective copy fees for all remaining records, which were provided upon receipt of the proper payment. The same documents have been requested by you and your wife, Angela Ross, on multiple occasions. The Department, City of Indianapolis, and the Office of Corporation Counsel have no further records to provide. As to your May 17, 2013 request, the Department has no record responsive to your request for any “statements made by Robert Noel d/o/b 11/13/71 and April Smith d/o/b 08/03/79 under

cause number 090025584 and any and all information acquired from 3034 Caven Street under the same cause, including any investigations information.”

## 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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here you submitted your written request for records on April 24, 2013, to which the Department responded in writing on April 25, 2013. Thereafter, you submitted a written request for records on May 17, 2103 which the Department acknowledged in writing on May 21, 2013. Thus, it is my opinion that the Department complied with the requirements of section 9(b) of the APRA by acknowledging the receipt of your request within seven (7) days.

It should be noted that the Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. Generally, if a public agency has no records responsive to a public records request, the agency 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....”). In addition, the APRA states that a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). A public agency may require that payment for copying costs be made in advance. *See* I.C. § 5-14-3-8.

The Department has advised that you have been provided with all records responsive to your April 24, 2013 request and that the Department has no records responsive to your May 17, 2013 request. All records responsive to your April 24, 2013 request were provided on April 26, 2013. Further, Ms. DeWester has advised that the Department, the City of Indianapolis, and the Office of Corporation Counsel have

nothing further to provide in response to the multiple requests that have been submitted by you and your wife. The Department would not violate the APRA by failing to produce records that do not exist; nor would it violate the APRA by requiring the receipt of all respective copying fees prior to disclosure of records responsive to your request. Accordingly, if the Department has provided all records responsive to your April 24, 2013 request on April 26, 2013, it is my opinion that the agency has complied with all requirements of the APRA. To the extent you do not believe all records have been provided, section 9 of the APRA outlines the procedures to be followed in filing a claim with the trial court.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Department complied with the requirements of section 9(b) of the APRA in responding to your request within seven (7) days of its receipt. If all records have been provided by the Department in response to your request, it has not violated the APRA.

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 distinct "H".

Joseph B. Hoage  
Public Access Counselor

cc: Samantha DeWester