



# STATE OF INDIANA

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August 9, 2013

Mr. Rocky Shroyer  
DOC 856193  
P.O. Box A  
New Castle, Indiana 47362

*Re: Formal Complaint 13-FC-205; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Shroyer:

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 Prosecutor and Public Access Counselor, responded in writing on behalf of the Department. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you provide that on February 19, 2013, you submitted a written request for records to the Department for booking records and photographs for certain individuals. On March 13, 2013, the Department advised in writing that it did not maintain any records responsive to your specific request. You note that the Department's response misspelled the names of the individuals that you had requested booking records for. You thereafter informed the Department of the clerical error and requested that your request be fulfilled. On April 1, 2013, the Department responded in writing to your correspondence and advised that it would commence a search. As of July 15, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any records in response to your request.

In response to your formal complaint, Ms. DeWester advised that your original request for records was fairly illegible. The Department at that time commenced a search for records and promptly advised you that it maintained no records responsive to the request. The Department thereafter received your subsequent request, which was properly acknowledged by Department staff. The Department, along with the City of Indianapolis, receives numerous requests for public records and currently has a large volume of requests pending. Upon receipt of your request, a search was immediately initiated by the Department. The Department now has collected all records responsive to

your request and has completed its review of the records involved. You were notified via correspondence on August 8, 2103 of the copying costs associated with your request.

## 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.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable here, the Department complied with the requirements of section 9 of the APRA in acknowledging the receipt of your requests, in writing, within seven (7) days of receipt. Due to a miscommunication between the parties, the original request did

not accurately reflect the records that were sought. In addition to responding to your request, the Department has advised that it receives numerous requests daily and currently has a large backlog of pending requests. The Department must not only gather all records responsive to your request, it must also redact the records for any information deemed confidential pursuant to state or federal law. The Department has now completed its search and review of records responsive to your request and you were sent notification on August 8, 2013 of the copying fees associated with your request. Considering all of these issues, with particular emphasis being placed that the records are now available for disclosure, it is my opinion that the Department has complied with section 3(b) of the APRA in providing all records responsive to your request in a reasonable period of time.

#### 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 "J. Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage  
Public Access Counselor

cc: Samantha DeWester