



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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August 16, 2013

Michael A. Kelley
DOC 2596383
1000 N. Boonville
Springfield, Missouri 65802

Re: Formal Complaint 13-FC-220; Alleged Violation of the Access to Public Records Act by the Indiana State Police Department

Dear Mr. Kelley:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lieutenant Mark Carnell responded in writing to your formal complaint on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have repeatedly requested records pertaining to your criminal matter and further sought the removal of convictions and/or arrests from your NCIS report. As of July 29, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that you have yet to receive any response from the Department.

In response to your formal complaint, Lt. Carnell advised that the Department has never received a request from you for records maintained by the agency. Rather, the Department received your request on May 2, 2013 to limit access to your criminal history pursuant to I.C. § 35-38-5-5. Upon investigation of your formal complaint, Lt. Carnell believes you are attempting to accomplish through the APRA what you have been unable to do through the courts, that is expunge or limit access to your criminal history. Further, criminal history information maintained by the Department can only be removed by court action or otherwise provided by law.

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).

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). After reviewing the actual request that you submitted to the Department in May 2013, I agree with the Department in that you have not submitted a request for records to the Department pursuant to the APRA. Rather, you petitioned the Department to limit access to your criminal history pursuant to I.C. § 35-38-5-5. The only request for records made in the materials that you submitted to the Department was a request sent to the Indiana Archives in September 2012; to which the Archives responded in October 2012 with all responsive records. Issues regarding limiting access to your criminal history and expungement are outside the purview of this office. As such, it is my opinion that the Department did not violate the APRA in response to your request to limit access to your criminal history pursuant to I.C. § 35-38-5-5.

CONCLUSION

Based on 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 stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Lt. Mark Carnell