



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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September 10, 2013

Ms. Laura E. Landenwich, Esq.
C/O Clay, Daniel, Walton and Adams, LLC
462 South Fourth St. Medington Tower, Ste. 101
Louisville, KY 40202

Re: Formal Complaint 13-FC-257; Alleged Violation of the Access to Public Records Act by the New Albany Police Department

Dear Ms. Landenwich:

This advisory opinion is in response to your formal complaint alleging the New Albany Police Department ("Department") violated the Access to Public Records Act ("APRA") submitted on September 3, 2013. As of September 10, 2013, the Department has not responded to your complaint. They were invited to do so on September 3, 2013 and again on September 9, 2013. Your request does not meet the requirements of a priority status pursuant to 62 IAC 1-1-3; however, your complaint is being treated as such at the discretion of the office.

BACKGROUND

In your formal complaint you provide that you submitted a written request for records to the Department on June 7, 2013 and June 25, 2013 involving the same records. Furthermore, you allege that the Department has failed to respond to your request in any fashion.

In the request you asked for investigative records from the Department regarding the arrest of one of your clients. This office is unaware if these records exist or are in the custody of the New Albany Police Department.

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 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). 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. As applicable here, you allege that you served the Department on June 7, 2013 and June 25, 2013. Without the Department's full response, the Public Access Counselor cannot determine whether the request was received as the PAC is not a finder of fact. As such, it is my opinion that the Department effectively denied the public records by not responding to your request within seven (7) days.

If they exist and are in the custody of the Department, the records you seek are subject to disclosure under APRA. The Department has not provided a reason by which they should be excluded nor have they indicated that they are attempting to retrieve said records to satisfy your request. The burden is on the public agency to show why, if such reasons exist, they should not be disclosed.

CONCLUSION

Based on the foregoing reasons and absent a response, it is my opinion that the New Albany Police Department violated the APRA in failing to respond to your request and by withholding the information you seek.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

cc: Sherri Knight