



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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February 15, 2013

Mr. Donald L. Humphrey
DOC 884325
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 13-FC-34; Alleged Violation of the Access to Public Records Act by the Starke County Sheriff's Department

Dear Mr. Humphrey:

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

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Department on or about January 4, 2013. As of January 31, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Department has failed to respond to your request in any fashion.

In response to your formal complaint, Ms. Smith advised that the Department has no record of the receipt of your request. Upon the receipt of your request and respective fee, the Department will forward all records.¹ Requests should be submitted to the Starke County Sheriff's Department, 108 N. Pearl St., Knox, Indiana 46534.

¹ Although not alleged in the formal complaint, the Department would only be able to charge a fee pursuant to the provisions of section 8 of the APRA, which provides as a non-state agency, the fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee for the certification and copying of documents. *See* I.C. § 5-14-3-8(d). The fee for copying documents may not exceed the greater of \$.10 cents per page for copies that are not color copies or the actual cost to the agency of copying the document. *See* I.C. § 5-14-3-8(d). The Department would be required to abide by section 8 of the APRA, minus a specific state statute that would allow it to charge an increased fee; the most common example being I.C. § 9-29-11-1(a), which provides that for accident reports, the agency may not charge a fee less than \$5.

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 (emphasis added). *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. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

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. To ensure that your anticipated future request is received by the Department, you may consider sending the request via certified mail U.S. Mail or having the request hand-delivered to the Department.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Christina Smith