



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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January 30, 2014

Mr. Marcus D. Richardson
Correctional Industrial Facility
5124 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 13-FC-359; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Office

Dear Mr. Richardson,

This advisory opinion is in response to your formal complaint alleging the Marion County Sheriff's Department ("MCSD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded via Counsel Sarah Steele Riordan, Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 30, 2013.

BACKGROUND

Your complaint dated December 30, 2013, alleges the Marion County Sheriff's Department violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On December 8, 2013, you served upon the Marion County Sheriff public records requests seeking several pieces of documentation related to your 1994 arrest. The Department responded on December 11, 2013 disclosing all of the records responsive to your request except for the 1994 arrest warrant you sought. The MCSD explained that because you were arrested by the Indianapolis Metropolitan Police Department, you would need to contact the Indianapolis Metropolitan Police Department to obtain those records. The MCSD provided the address to you for that 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 Ind. Code § 5-14-3-1. The Marion County Sheriff’s Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Department satisfied its obligation under the APRA by responding to your request in a timely manner. Moreover, the MCSO guided you to the appropriate entity to make the request for the records they do not maintain, namely the 1994 arrest warrant. As has been held many times in the past by myself and former Public Access Counselors, a public agency cannot be required to disclose records they do not maintain.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Marion County Sheriff’s Department did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a stylized flourish extending from the bottom left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Sarah Steele Riordan, Esq.