



STATE OF INDIANA

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July 9, 2014

Mr. David Lubelski #219781
Indiana State Prison
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 14-FC-125; Alleged Violation of the Access to Public Records Act by the St. Joseph County Sheriff's Department

Dear Mr. Lubelski,

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Sheriff's Department ("SJCS D") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The SJCS D has responded via Legal Deputy Eric Tamashasky. His response is enclosed for your review. 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 June 9, 2014.

BACKGROUND

Your complaint dated May 15, 2014, received on June 9, 2014, alleges the St. Joseph County Police Department ("SJCPD") 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).

You submitted a request dated April 10, 2014 to the SJCPD seeking information related to the St. Joseph County Jail's "suicide watch". You allege, and SJCPD affirms in their response to your complaint, your request was not acknowledged. After your formal complaint was received by SJCPD, you were sent records partially satisfying your request. In their response to your complaint, SJCPD states the records were compiled prior to their reception of your formal complaint, but were not sent out do to issues with the jail management system transition.

You requested from SJCPD "[t]he St. Joseph County Jail policy on handling/watching jail inmates who are placed on 'suicide watch'; and [your] complete jail and mental health records during [your] incarceration at the St. Joseph County jail..." SJCPD provided you with the records they possessed responsive to your request. However, the

mental health records are not in the possession of the SJCPD; rather, they are possessed by Memorial Home Care. SJCPD stated they cannot provide these records to you as they do not possess or have access to the mental health records.

DISCUSSION

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 St. Joseph 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 SJCS D’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 SJCS D concedes it erred in not responding to your request within seven (7) days, however, they have attempted to rectify the situation by sending you the records responsive to your request and waiving any copy fees. While I cannot condone the delay, the SJCS D has commendably remedied the mistake and I trust the production of records is now to your satisfaction.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the St. Joseph County Sheriff’s Department acted contrary to the Access to Public Records Act by not acknowledging your request within seven (7) days; however, they have resolved the issue with their subsequent response.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Eric Tamashasky