



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 7, 2015

Mr. Darryl Linear Anderson - #171085
New Castle Correctional Facility
P.O. Box E
New Castle, Indiana 47362

Re: Formal Complaint 15-FC-87; Alleged Violation of the Access to Public Records Act by Speedway Police Department

Dear Mr. Anderson,

This advisory opinion is in response to your formal complaint alleging the Speedway Police Department ("Department") violated the Access to Public Records Act, Ind. Code § 5-14-3-1 *et. seq.* The Department has responded via Mr. James Gutting, Esq. 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 March 6, 2015.

BACKGROUND

Your complaint dated February 25, 2014 alleges the Speedway Police 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 February 11, 2015, you submitted to the department a public records request seeking access to records regarding the identities of two Speedway Police Department officers. No written acknowledgement was tendered to you as is required by APRA.

On March 23, 2015, Counsel for the Department responded to your complaint. According to the Department, your complaint was received by the Department on February 17, 2015 and forwarded to legal counsel. A denial was not issued because the Department intended to respond to your request. A letter was apparently sent to you on March 2, 2015; however, it was returned as undeliverable on March 16, 2015. The address provided was incorrect.

A second letter was sent to you on March 18, 2015 and Counsel believes you should have received the letter.

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 Speedway Police 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.

An agency who fails to provide an acknowledgement is ordinarily in violation of APRA. However, even if the Department did provide acknowledgement within the time period, that acknowledgement would have been undeliverable due to the incorrect address provided. Therefore, while the Department may be in technical violation of the APRA, actual compliance with APRA would have been impossible because service could not be perfected due to a deficient address provided by you.

Therefore, while the Department should have attempted to acknowledge your request within seven (7) days of receipt on February 17, 2015, it appears as if they have remediated the issue and sent you a letter of instruction to your correct address in order for you receive the records.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. James Gutting, Esq.