



STATE OF INDIANA

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The Complainant filed his formal complaint dated December 16, 2016, alleging the FBI was able to send him records and reports in regards to this matter; therefore, the respondents have violated the APRA by not complying with his records request.

ISP claims it has conducted a full and thorough search using its agency's databases and found no records regarding Mr. Warren. The legal department also contacted Lt. Elam to verify no records exist. Additionally, Lt. Elam advised she did meet with the Complainant, but he was referred to the FBI and she never created any reports or notes regarding his case.

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 Indiana Code § 5-14-3-1*. The Indiana State Police is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the ISP's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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. ISP has complied with the statute in regards to responding to the Complainant in a timely manner.

It appears ISP has done their due diligence in searching for the files the Complainant requested. The Respondents stated each time the Complainant made a request for these records, it would conduct a search, yet each time it yielded no results. I have held on many occasions a public agency does not have to create a document in order to satisfy a public records request. Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. The APRA governs access to the public records of a public agency which are already in existence; the failure to produce public records which do not exist or are not maintained by the public agency is not a denial under the APRA. If the records do not exist, certainly ISP could not be required to produce a copy.



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CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana State Police did not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read "LHB", written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Ms. Cynthia Forbes, Esq.