



STATE OF INDIANA

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June 4, 2008

Jason Smathers
511 Prentiss Way
Avon, Indiana 46123

Re: Formal Complaint 08-FC-126; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Smathers:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. IMPD's response to the complaint is enclosed for your reference. It is my opinion IMPD did not violate the APRA.

BACKGROUND

You allege that on May 6, 2008 you submitted to IMPD a request for copies of records. Specifically, you requested case records involving an investigation conducted by the IMPD. You filed this complaint on May 14, alleging you had received no response from IMPD.

IMPD responded to the complaint by letter dated May 30 from April Schultheis, Public Access Counselor and Assistant Corporation Counsel for the City of Indianapolis. IMPD contends that after a diligent search, it has determined it did not receive your May 6 request. IMPD has now reviewed the request (which this office sent to IMPD with a copy of the complaint) and will respond directly to you.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. IMPD is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of IMPD

during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, facsimile, or electronic mail and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here IMPD asserts it did not receive your request. If IMPD did receive your request, it would have a duty under the APRA to respond within seven days of receipt. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if IMPD did not receive your request, it did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, it is my opinion IMPD did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: April Schultheis, City of Indianapolis Public Access Counselor and Assistant Corporation Counsel