



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 25, 2008

Christopher A. McQuillin
Lake County Sheriff's Department
2293 North Main Street
Crown Point, Indiana 46307

Re: Formal Complaint 08-FC-148; Alleged Violation of the Access to Public Records Act by Lake County Community Corrections

Dear Mr. McQuillin:

This advisory opinion is in response to your formal complaint alleging Lake County Community Corrections ("LCCC") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of LCCC's response to the complaint for your reference. It is my opinion LCCC did not violate the APRA in the timeliness of its response to your request. Further, it is my opinion that LCCC must provide you access to any requested records which are not excepted from disclosure. To the extent records fall under a discretionary exception, LCCC may determine how best to exercise its discretion.

BACKGROUND

You allege that on May 30, 2008 you personally delivered to LCCC a request for access to records. In the letter you requested a verbal response on Monday, June 2 as to when the information would be available. You allege that as of June 4 you had received no response. You filed this complaint on June 5.

LCCC responded to the complaint by letter dated June 19 from Executive Director Kellie Bittorf. LCCC contends that upon receipt of the May 30 request, LCCC responded by letter dated June 2 and sent to you via interoffice mail. LCCC contends that the office telephoned you upon receipt of a copy of your complaint and left a message indicating that if you did not receive the June 2 letter you should contact the office. LCCC contends it did not receive a return call. Further, LCCC contends that at the June 12 meeting of the LCCC Advisory Board, you indicated you no longer needed the requested information. LCCC contends you agreed to submit a written notice indicating such but you did not do so.

You sent further correspondence to my office. While your letter is dated June 4, we received it on June 24. Further, the letter refers to correspondence from June 10, June 16, and June 20, so I assume the June 4 date of the letter is in error. You assert that you maintain your request for the records. Further, you allege LCCC has violated the APRA by taking the position the records may only be released by a vote of a majority of the Advisory Board.

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. LCCC 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 LCCC 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 (or electronic mail) or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a). This office has said twenty-four hours means twenty-four business hours, or the same time the next day. *See Opinion of the Public Access Counselor 00-FC-28.*

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you delivered your request in person on May 30, which was a Friday. LCCC was required by the APRA to respond to you by the same time the next business day, or June 2. LCCC contends, and provides a copy of the letter, that it responded to you by letter dated June 2. While the APRA does not require an agency to respond to the requester in the manner the requester suggests, I often advise agencies to respond as requested and then follow up in writing if the agency wishes to keep a written record. Here, LCCC responded to your request on June 2, which is within the time required by

the APRA. As such, it is my opinion the timing of the initial response did not violate the APRA.

LCCC contends that at the June 12 meeting of the Advisory Board, you agreed to table your request and to provide a written notice to LCCC that you had done so. It is my opinion that if the LCCC reasonably believed your request was rescinded, it did not violate the APRA by failing to produce the records. The minutes of the meeting reflect a discussion between you and the Advisory Board related to the records, wherein LCCC contends you agreed to table the issue. If you did not indicate your intention to rescind the request, LCCC had a duty to provide the records.

Regardless of whether you agreed to rescind the request, you have now indicated you maintain the request as delivered on May 30. As such, LCCC is required by the APRA to provide access to any requested records it maintains which are responsive to your request and not excepted from disclosure. *See* I.C. § 5-14-3-3(a). You contend that it is not appropriate for the LCCC staff to await a vote by the Advisory Board to release the information. I agree this is inappropriate. The APRA requires disclosure of public records which are not excepted from disclosure. *Id.* This is not a discretionary requirement. LCCC must provide you access to records which are required to be disclosed, regardless of how the Advisory Board would vote. It is my opinion, though, that to the extent any records responsive to your request fall under the discretionary exceptions to disclosure found in I.C. § 5-14-3-4(b), LCCC may determine how it will exercise its discretion to release or withhold those records.

CONCLUSION

For the foregoing reasons, it is my opinion LCCC did not violate the APRA in the timeliness of its response to your request. Further, it is my opinion that LCCC must provide you access to any requested records which are not excepted from disclosure. To the extent records fall under a discretionary exception, LCCC may determine how best to exercise its discretion.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Kellie Bittorf, Executive Director, Lake County Community Corrections