



STATE OF INDIANA

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May 5, 2009

Gregory Sobin
DOC #113650
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 09-FC-109; Alleged Violation of the Access to Public Records Act by the Floyd County Sheriff's Department

Dear Mr. Sobin:

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

BACKGROUND

You allege that more than two weeks prior to filing the present complaint you mailed to the Department a request for copies of records concerning an individual. You allege the Department did not respond to your request. Your complaint was postmarked on April 22, and my office received it on April 27.

The Department responded to the complaint by letter dated April 29 from Sheriff Darrell Mills. The Department contends the office has not received a request from you. Sheriff Mills further indicates that he has now searched the records of the office and finds no records responsive to your request.

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

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). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the Department did not receive your request. If the Department had received the request, the office would have been required to issue a response to you within seven days of receipt. I.C. § 5-14-3-9(b). An agency cannot, though, respond to a request it has not received. As such, the Department has not violated the APRA by not responding to a request the office did not receive.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Darrell Mills, Floyd County Sheriff