



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 5, 2009

Robert Cardwell
2050 East Hanna Avenue
Indianapolis, Indiana 46227

Re: Formal Complaint 09-FC-128; Alleged Violation of the Access to Public Records Act by the Indiana State Personnel Department

Dear Mr. Cardwell:

This advisory opinion is in response to your formal complaint alleging the State Personnel Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for a copy of a record. The Department's response to the complaint is enclosed for your reference. It is my opinion the Department did not violate the APRA by not responding to a request it did not receive.

BACKGROUND

You allege that on May 6, 2009 you submitted a request to the Department for a copy of a proposal offered to you on April 30. You filed the present complaint on May 19 (postmarked May 14), alleging the Department failed to respond to the request.

The Department responded to the complaint by letter dated June 1 from Department attorney Brian Keith Beesley. The Department contends that the copy of the formal complaint the Department received from my office was the first the Department learned of the request. Mr. Beesley further points out that the May 6 request you allege you sent does not contain a street name, address, room number, building name, or title of the agency. The Department contends the request was not received by any employee of the Department responsible for handling such correspondence. Having now received a copy of the request, the Department included a copy of the record with its response to the complaint.

You sent to my office a subsequent letter, dated June 4. You contend that you sent the request by electronic mail and then printed that message and mailed the request to the Department. You make further allegations related to the authenticity of the record. Since these issues are outside the purview of this office, I do not address those here.

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 or facsimile 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 the Department asserts it did not receive your request. If the Department did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). 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 the Department did not receive your request, it did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Brian Keith Beesley, State Personnel Department