



# STATE OF INDIANA

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January 22, 2009

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

*Re: Formal Complaint 09-FC-13; Alleged Violation of the Access to Public Records Act by the Washington County Sheriff's Department*

Dear Mr. Sobin:

This advisory opinion is in response to your formal complaint alleging the Washington 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 records. 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 you submitted two requests for access to records, the latter of the two having been sent on November 14, 2008. You allege the Department failed to respond to either request. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to the complaint by letter dated January 13, 2009 from attorney Thomas Scifres. The Department contends the Sheriff recalls receiving only one request, which was "a couple of months ago to the best of his recollection." He does not recall receiving your November requests. The Department further contends your complaint is untimely under I.C. § 5-14-5-8, basing the contention on the lack of a postmark associated with your complaint.

The Department contends the Sheriff could not respond to your request because the request was so vague the sheriff had insufficient information to respond. The Department contends it maintains no document titled or reference to as "incident report." The Department further contends that because the APRA only requires the agency to provide access to allow you to inspect and copy the records, the Department is not required to incur the cost associated with sending you copies of records. The Department

contends that since you did not provide a postmarked envelope, postage prepaid, the Department was not required to send the records to you.

Finally, the Department contends the issue may be moot because the Sheriff, since receiving the complaint, has located an arrest report which may be responsive to your request. The Department indicates it has now sent that record 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. The Department 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 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).

The Department first contends your complaint is untimely. I.C. § 5-14-5-8(a)(1) provides that a complaint based on an APRA denial must be not later than thirty days after the denial. Further, I.C. § 5-14-5-8(b) provides that a complaint is filed on either the date it is received by my office or the date it is postmarked if my office receives it more than thirty days after the denial.

Here, you contend you submitted the latter of the two requests on November 14, 2008. The November 14 request probably did not arrive at the Department the next day, November 15. Assuming it did, though, the request would have been deemed denied on November 22. Your complaint was received in my office on December 23 but was postmarked on December 16. As such, the complaint is timely under the statute.

The Department asserts the office has no record of having received your November requests. If the Department did receive your requests, it 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.

While it is my opinion the Department did not violate the APRA because it did not receive your request, I am compelled to address two issues raised by the Department. First, the Department contends that because you did not identify with reasonable

particularity the record being requested (as required by I.C. § 5-14-3-3(a)), the Department “could not respond” to the request. To the contrary, the APRA requires a public agency which receives a request for access to records to respond within the prescribed timeframes. *See* I.C. § 5-14-3-9(b). Here, an appropriate response would be that the Department has received your request but cannot locate any records responsive to the request because it is overly vague and does not identify with reasonable particularity the record being requested.

Second, the Department contends it is not required to provide you with copies of records at its expense. Further, the Department contends that because you did not send a postmarked, prepaid envelope, it was not required to send you records. The APRA provides that an agency must provide copies of records if the agency has reasonable access to a machine capable of reproducing the records if the person is entitled to a copy of the record. *See* I.C. § 5-14-3-8(e). The agency may charge a copy fee that conforms to I.C. § 5-14-3-8 and may charge the fee in advance of providing the copies. *See* I.C. § 5-14-3-8(e). The APRA is silent on the issue of postage costs, so this office generally advises that the agency may charge the actual cost of postage in addition to the approved copy costs. In my opinion, it would be appropriate for the Department to respond to the request within the timeframe set out in I.C. § 5-14-3-9 and in that response indicate the copy and postage costs. Upon receipt of that fee, the Department should then send the copies.

#### 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: Thomas Scifres  
Sheriff Claude Combs