



STATE OF INDIANA

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August 21, 2009

Derek Morris
DOC #104145
3038 West 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 09-FC-176; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police 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's response to the request was untimely under the statute, but the Department did not otherwise violate the APRA.

BACKGROUND

You allege that in July 2009 you mailed to the Department a request for access to records. You filed the present complaint on August 5 (postmarked August 3), alleging the Department had failed to respond to the request.

The Department responded to the complaint by letter dated August 20 from City of Indianapolis Chief Deputy Corporation Counsel and Public Access Counselor Samantha Karn. The Department indicates it appears it did fail to respond to your request within seven days of receipt. The Department contends, though, that it has already informed you it does not maintain the type of records you seek. The Department has now responded 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 indicates it appears the response was not sent to you within seven days of receipt of the request. As such, the Department's response was untimely. I.C. § 5-14-3-9(b). The Department has now responded to your request. As such, it is my opinion the Department has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department's response to the request was untimely under the statute, but the Department did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Samantha Karn, City of Indianapolis