



# STATE OF INDIANA

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August 21, 2009

Rasson Roby  
DOC #194983  
Wabash Valley Correctional Facility  
PO Box 1111, L-314  
Carlisle, Indiana 47838

*Re: Formal Complaint 09-FC-184; Alleged Violation of the Access to Public Records Act by the Gary Police Department*

Dear Mr. Roby:

This advisory opinion is in response to your formal complaint alleging the Gary Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department has not violated the APRA.

## BACKGROUND

You allege that on July 12, 2009 and July 14, 2009 you requested access to records maintained by the Department. You filed the present complaint on August 12 (postmarked August 10), alleging you had not yet received a response to the request.

The Department responded to the complaint by electronic mail message dated August 14 from Richard Allen. The Department contends you did not send the required fees with your request. The Department provided you with information regarding the amount of the fees and where you should send payment.

## 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 transmission 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, it is unclear to me whether the Department responded to your request. If the Department received your request and did not respond to it within seven days, the response is untimely. *See* I.C. § 5-14-3-9(b). Even if you did not include the appropriate fees, the Department is still required to respond to your request and indicate that to you.

While the response may have been untimely, the Department's response to the complaint contains an indication that the Department will send you the copies upon receipt of payment of copy costs. The APRA allows the Department to require advance payment for copy fees. I.C. § 5-14-3-8(e). To receive copies of the records, you must first remit payment to the Department.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Department's response may have been untimely under the APRA but the Department did not otherwise violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Richard Allen, Gary Police Department