



# STATE OF INDIANA

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March 4, 2009

Clay Howard  
DOC #112612  
New Castle Correctional Facility  
PO Box A  
New Castle, Indiana 47362

*Re: Formal Complaint 09-FC-46; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Sheriff's Office*

Dear Mr. Howard:

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

## BACKGROUND

You allege that you submitted a request to the Office for copies of a number of mug shots. You do not indicate the date you sent the request, but you indicate the date of denial was February 2, 2009. You filed the present complaint on February 11, alleging the Office failed to respond to the request.

The Office responded to the complaint by letter dated February 12. The Office contends that it received a request from you in October 2008 and provided you copies of jail photographs in response to that request. The Office contends it has not received a subsequent request from you. Upon receiving a copy of the complaint, the Office indicates it will now send you a copy of the Office's request form as well as details regarding copy costs associated with providing the records.

## 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 Office 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 Office 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 Office asserts it did not receive your request. If the Office 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 Office did not receive your request, it did not violate the APRA by not responding.

#### CONCLUSION

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

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Tracy A. Brown, Tippecanoe County Sheriff