



# STATE OF INDIANA

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February 18, 2009

Dorothy Snyder  
236 East Pendle Street  
Roseland, Indiana 46637

*Re: Formal Complaint 09-FC-51; Alleged Violation of the Access to Public Records Act by the Saint Joseph County Community Corrections Program*

Dear Ms. Snyder:

This advisory opinion is in response to your formal complaints alleging the Saint Joseph County Community Corrections Program ("Program") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your requests for access to records. In my opinion the Program has violated the APRA if it received your requests and did not respond to the requests within seven days.

## BACKGROUND

You filed the present complaint on February 11, 2009. You allege that on February 2 you sent by facsimile transmission to the Program two requests for access to records maintained by the Program. You allege you have received no response as of the date of filing this complaint. You requested priority status for the complaints, alleging that you need the records for a proceeding before another agency, namely a hearing set for February 19. Pursuant to 62 IAC 1-1-3, priority status has been granted. Because the two complaints are similar, they have been consolidated and are herein addressed as one.

My office sent a copy of the complaints to the Program and invited the Program to respond, but to date my office has not received a response to the complaints. I understand Judge J. Jerome Frese contacted Amy Miller of my office by telephone and indicated he considers the records investigatory 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 Program 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 Program 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).

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). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

You submitted the requests to the Program on February 2. Pursuant to the APRA, the Program should have responded to the requests within seven days, or by February 9. If the Program received your requests and did not respond within the prescribed timeframes, the Program violated the APRA by denying you access to public records.

If the Program asserts the records are excepted from disclosure pursuant to the investigatory records exception found in the APRA (at I.C. § 5-14-3-4(b)(1)), the Program must deny access in writing since you submitted your requests via facsimile. The denial must include a statement of the specific exemption authorizing the withholding of all or part of the public record. *See* I.C. § 5-14-3-9(c). The Program bears the burden of proof to sustain the denial of access. I.C. § 5-14-3-1. It is my understanding the Program did not deny the records in writing. In my opinion, this constitutes a violation of the APRA.

You marked the box on the complaint form to indicate an alleged Open Door Law violation as well, but you make no allegations regarding any meetings held by the agency. As such, I cannot make a determination regarding any alleged Open Door Law violations.

CONCLUSION

For the foregoing reasons, it is my opinion the Program has violated the APRA if it received your request and did not respond to the request within seven days.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Saint Joseph County Community Corrections Program