



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 29, 2010

Mr. Tyrone Frazier
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 10-FC-73; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Frazier:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

I note that I have granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3). However, I also recognize that you have repeatedly filed complaints with this office requesting priority status. Priority status will be freely granted to you as required by rule, but due to the number of priority requests that you have made I believe it is necessary to ask you to provide me with a cause number for any pending hearings that form the basis of your priority request. In other words, a request for priority status with nothing more than "I have a hearing" will not be sufficient; please provide the associated cause number for such hearing so that we can verify your need for priority status.

BACKGROUND

According to your complaint, on March 8, 2010, you requested a search warrant from IMPD. You allege that IMPD failed to respond to that request.

IMPD has not yet provided a response to your complaint.

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. IMPD is 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 IMPD’s public records during regular business hours unless the public records are exempt 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If IMPD failed to respond to your request within seven (7) days, IMPD violated the APRA.

I note that there is no provision in the APRA entitling you to copies of public records at no charge. A court may grant a waiver of fees but is not required by the APRA to do so. As such, even if IMPD received your request, it would not violate the APRA by refusing to provide you with copies of the requested records at no charge. Further, the APRA permits IMPD to require that payment for copies be made in advance. I.C. § 5-14-3-8(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if IMPD received your request and failed to respond within seven (7) days, IMPD violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Steven Swarm, Narcotics Division, IMPD