

February 6, 2008

Frank Nagy
6840 Seeger Drive
Evansville, Indiana 47712

Re: Formal Complaint 08-FC-33; Alleged Violation of the Access to Public Records Act by the Indiana Bureau of Motor Vehicles

Dear Mr. Nagy:

This is in response to your formal complaint alleging the Indiana Bureau of Motor Vehicles ("BMV") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. It is my opinion the BMV violated the APRA if it received your request and did not respond to you.

BACKGROUND

You allege that you submitted a request to the BMV dated October 2, 2007 and another request for the same records dated December 6, 2007. After the BMV received the October 2 request, Brad Folck of the BMV telephoned you to inquire what you were seeking. You understood it would not be difficult to obtain the records you requested. Hearing no further response, you renewed the request on December 6. Receiving no response after that request, you mailed this complaint on January 4, 2008, and I received it on January 8.

I sent a copy of your complaint to the BMV for response, but I have not received a response to the complaint.

ANALYSIS

The public policy of the APRA states that "(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." Ind. Code §5-14-3-1. The BMV is clearly 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 the public records of the BMV 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). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

I have no indication here whether the BMV received your December 6 request. If the BMV did receive the request, the BMV had a duty to respond to the request within seven days. Regardless of whether the BMV received the December 6 request, it is my opinion three months from the time of your initial request is an unreasonable amount of time for the BMV to fail to contact you again to let you know the status of your request or to produce any responsive records.

CONCLUSION

For the foregoing reasons, it is my opinion the BMV violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Brad Folck, Indiana Bureau of Motor Vehicles