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August 1, 2013

Mr. Anthony L. Ross
DOC 862285
727 Moon Road
Plainfield, Indiana 46168

Re: Formal Complaint 13-FC-192; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Ross:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Samantha DeWester, City Prosecutor and Public Access Counselor, responded on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that sometime in June 2013, you submitted a written request for records to the Department regarding information related to a May 22, 2010 arrest. On June 7, 2013, the Department, in writing, confirmed the receipt of your request. As of July 8, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that the Department has yet to provide any records responsive to your request.

In response to your formal complaint, Ms. DeWester confirmed that the Department received your request on June 3, 2013. The Department immediately initiated a search for any records that were responsive to the request; the Department's search is ongoing. The Department confirmed the receipt of your request, in writing, on June 7, 2013. If responsive records are discovered, after any redaction, you will be notified of the respective copying fees. The Department and the City of Indianapolis are currently addressing a large volume of pending record requests.

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.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here the Department received your request for records on June 3, 2013 and acknowledged the receipt of the request, in writing, on June 7, 2013. It is my opinion that the Department complied with the requirements of section 9(b) of the APRA in response to your request.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable here, the Department received your request for records on June 3, 2013. The Department acknowledged the receipt of your request, in writing, on June 7, 2013. The Department informed you at that time that it had initiated a search for all records maintained by the agency that would be responsive to your request and would inform you of the respective copying fees upon completion of said search. You filed your formal complaint with the Public Access Counselor on July 8, 2013. In addition to your request, the Department is required to address all other request for records received

by the agency pursuant to the APRA as well as continue to meet and maintain its normal duties and obligations. The Department has advised that it has a large number of pending record requests currently being researched. In light of all of these factors, it is my opinion that the Department is currently in compliance with the requirements of section 3(b) of the APRA in providing all records responsive to your request in a reasonable period of time. As noted by the Department in its response to your formal complaint, immediately upon completion of its search, you will be advised of the respective copying fees associated with the records collected by the Department that are responsive to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage
Public Access Counselor

cc: Samantha DeWester