

May 21, 2008

Paul Ogden
118 North Delaware Street
Indianapolis, Indiana 46228

Re: Formal Complaint 08-FC-116; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Department

Dear Mr. Ogden:

This advisory opinion is in response to your formal complaint alleging the Marion County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to produce the records you request in a reasonable period of time. I have enclosed a copy of the Department's response to the complaint for your reference. It is my opinion the Department has not violated the APRA so long as the Department makes reasonable efforts to provide all disclosable records to you by May 23, the date the agency has given you for completion of the request.

BACKGROUND

In your complaint you allege that you hand-delivered a request on April 23, 2008 (the request was dated April 22) to the Department, requesting access to the following:

1. The current contract for the operation of the Jail #2 facility at 730 W. Washington Street, Indianapolis, IN 46204.
2. Copies of all documentation relating to the American Correctional Association's (ACA) recent audit of Jail #2 facility, including receipts or other documentation showing how much Corrections Corporation of America paid for ACA for the audit.

You received a response to your request dated April 22 from Marc Pe-Caine Sultzer, Assistant Corporation Counsel for the City of Indianapolis. Mr. Sultzer indicated the office was processing the request but claimed it was an expansive, broad request. Mr. Sultzer indicated that any responsive records would be reviewed to determine whether any material is nondisclosable. You filed this complaint on May 7, alleging that because the 24 hour time for complying had elapsed, the request should be treated as a denial of access.

Mr. Sultzer responded to the complaint, by letter dated May 14, on behalf of the Department. The Department contends it did not deny your request but timely acknowledged the request and informed you it was in the process of reviewing the records. Mr. Sultzer refers to *Opinion of the Public Access Counselor 07-FC-296*, which provides that there are no timeframes for production of records. Instead, records must be produced in reasonable period of time. The Department contends that since you did not offer to narrow the request, it was required to search all of its records for any document related to the “recent” audit. The Department contends that because you did not limit the request in time (by failing to define “recent”) or scope, the request required a review of a broad scope of documents. Finally, the Department indicates it anticipates completing the search and compilation of records by May 23.

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." I.C. § 5-14-3-1. The Department 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 Department 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 in person and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a).

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. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

This office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, your initial request was made on April 22. The Department's response on the same day was timely under the statute. *See* I.C. § 5-14-3-9(a). While you assert the Department should have complied with the request within 24 hours, in actuality the law requires the Department to respond to the request within 24 hours, which it did.

Regarding the time for production of the records, you contend the records could be easily retrieved and produced. While that may or may not be true for a copy of a contract, the Department has indicated that the other request was broad and expansive because it was not limited in time or scope. Because I do not know how the Department's records are maintained or catalog, I cannot find the Department is unreasonable in taking approximately one month to search for and review the requested records. It is my opinion the Department has demonstrated it is working to produce the documents you requested in a reasonable amount of time.

It is my opinion, though, that if the contract was readily available and if you indicated you preferred to receive the contract before the other records, the Department should have made efforts to provide the contract first before it conducted its search and review related to the audit records. As has long been the suggestion of this office, when documents in response to a request are voluminous, the agency should provide documents in the interim as they become available. This further displays the effort the agency is making to provide transparency in government and provide access to public records.

CONCLUSION

For the foregoing reasons, it is my opinion the Marion County Sheriff's Department has not violated the Access to Public Records Act so long as it makes reasonable efforts to provide you the requested records by May 23, the date it indicated the records should be available.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Marc Pe-Caine Sultzer, Office of Corporation Counsel, City of Indianapolis