



STATE OF INDIANA

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June 25, 2008

Jason Smathers
511 Prentiss Way
Avon, Indiana 46123

Re: Formal Complaint 08-FC-146; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Smathers:

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) by denying you access to records. 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.

BACKGROUND

You allege that on May 21, 2008 you submitted a request to the Department for an electronic copy of the Department's incident report database. You allege that on May 26 you received a response from the Department denying your request without the proper citation of an exemption to disclosure. You filed this complaint on June 2, alleging denial of access.

The Department responded to the complaint by letter dated June 3 from April Schultheis, Public Access Counselor and Assistant Corporation Counsel in the Office of Corporation Counsel for the City of Indianapolis. The Department contends it did not deny you access to records. Instead, the Department indicated it could not provide you an electronic copy of the records at the time of your first request. The Department did suggest that you could obtain the records in a more timely fashion by two other means. The Department contends you were not satisfied with the two methods for obtaining the information, so you again requested a copy of the database, this time in CSV format. The Department contends it has been working diligently to identify responsive records and determine the Department's ability to comply with the request. The Department contends it received this May 26 request on May 27 (since May 26 was a legal holiday). The Office of Corporation Counsel responded to the request on behalf of the Department by letter dated June 2. The Department contends this response is timely under the APRA.

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 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 by mail (or electronic mail) or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b).

The Department received your initial request via electronic mail on May 22 and responded by electronic mail on May 26. The Department received your subsequent request on May 26 and responded by letter dated June 2. Both responses are timely under the APRA. *See* 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). Previous public access counselors and I have 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.

The Department's response contained an indication that the Department has initiated a search of its records to determine whether it maintains records responsive to your request. This is an appropriate response under the APRA, and as such it is my opinion the Department has not violated the APRA.

The following APRA provision addresses electronic records:

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the

medium requested is compatible with the agency's data storage system.
This subsection does not apply to an electronic map.
I.C. § 5-14-3-3(d).

Here, you have requested an electronic copy of a database maintained by the Department; you have requested the copy in a particular format. If the requested record is a record created and maintained in an electronic format, it is the type of record contemplated by I.C. § 5-14-3-3(d). As such, the Department must make *reasonable efforts* to provide a copy of the record in the medium requested if the medium requested is compatible with the Department's data storage system. *See* § 5-14-3-3(d). It is my understanding the Department is now investigating what efforts will be required to provide you the records in the format requested.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: April Schultheis, Office of Corporation Counsel