



STATE OF INDIANA

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July 31, 2008

Ricky Tobar
DOC #995163
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 08-FC-171; Alleged Violation of the Access to Public Records Act by the Saint Joseph County Police Department

Dear Mr. Tobar:

This advisory opinion is in response to your formal complaint alleging the Saint Joseph County Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to your complaint is enclosed for your reference. In my opinion the Department has not violated the APRA.

BACKGROUND

In your complaint you allege you requested by letter dated June 8, 2008 a copy of records related to your transport by the Department. You indicate the date of the records is on or about May 24, 1999. You filed this complaint on July 10, 2008 (postmarked July 7, 2008), alleging denial of access.

The Department responded to the complaint by letter dated July 28 from A. Howard Williams, Legal Deputy for the Department. The Department provides copies of two letters sent to you, one dated May 7, 2008 and one undated, indicating the Department no longer maintains the records you requested because they have been destroyed.

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 a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 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). Here, you allege you submitted the request on June 8, but the Department provides evidence it responded to the request by letter dated May 7 and by another undated letter. So long as the Department responded to the request within seven days of receipt, its response was timely under the APRA.

The Department contends it cannot produce the requested records because the records are nine years old and have been destroyed. I.C. § 5-14-3-7(a) requires public agencies to protect public records from loss, alteration, mutilation, or destruction. I.C. 5-15, covering retention of records, applies to certain records of public agencies; these records are required to be maintained for a period of time and destroyed only in accordance with an established records retention schedule. I.C. § 5-14-3-4(e)(1) provides that public records subject to I.C. 5-15 may be destroyed only in accordance with record retention schedules under I.C. 5-15. I.C. § 5-14-3-4(e)(1) further provides that records not subject to I.C. 5-15 may be destroyed in the regular course of business.

So long as the Department destroyed the records pursuant to its established retention schedule, which the Department could prove by producing a copy of a destruction notice that would have been created contemporaneous with the destruction of the records, the Department did not violate the APRA. *See* I.C. 5-15-6-2.5(d).

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: A. Howard Williams, Legal Deputy, Saint Joseph County Police Department