



STATE OF INDIANA

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September 5, 2008

Derek Morris
DOC #104145
PO Box 900
Bunker Hill, Indiana 46914

Re: Formal Complaint 08-FC-198; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department Citizens' Services Office

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department Citizens' Services Office ("Office") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. The Office's response to the complaint is enclosed for your reference. It is my opinion the Office violated the APRA if it did not respond to your request within seven days of receipt of the request.

BACKGROUND

You allege that you sent to the Office a request for access to records. The request was dated July 21, 2008. You mailed the present complaint on August 15, and my office received it on August 19. You allege you have received no response from the Office.

The Office responded to the complaint by letter dated September 4 from Samantha Karn of the City of Indianapolis Office of Corporation Counsel. The Office contends that the APRA does not provide a time for production of records, as indicated in Opinion of the Public Access Counselor 07-FC-296. The Office contends that it does not maintain copies of response letters sent upon receipt of requests for access to records nor does it keep a log of letters sent. As such, the Office cannot provide evidence it sent a response to your request. The Office argues, though, that your complaint is unreasonable because it was sent only eighteen days after you sent the request for records.

The Office also notes that the address you list on the formal complaint form is different from the address listed on your request for access to records. As such, if the Office sent the response to the address listed on the request, you might not have received the response.

The Office of Corporation Counsel indicates it will be mandating that public records request correspondence in addition to related materials be retained according to the appropriate retention schedule. Finally, the Office indicates it will send correspondence to you indicating the requested records have been compiled and indicating the copy fee you need to remit before the copies will be sent.

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 Office is clearly 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 Office 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 the Office does not maintain records of responses sent to requests for access to records it receives. If the Office did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). If the agency did not respond to the request within seven days, it violated the APRA. The Office of Corporation Counsel's new mandate that the Office keep copies of responses to requests is in conformance with Indiana law, as public agencies are required to retain public records in accordance with Ind. Code 5-15. *See* I.C. § 5-14-3-4(e). The response sent by an agency is a public record, as it is a record created by the agency. *See* I.C. § 5-14-3-2(n), *defining "public record."*

The Office contends that your complaint was unreasonable because it was filed only eighteen days after you submitted your request to the Office. I would note that my records indicate you mailed the complaint on August 15, although it was dated August 8. Certainly a complaint should not be sent to this office until an actual denial occurs. The APRA provides that a request is deemed denied if the agency does not respond within seven days of receipt of the request. I.C. § 5-14-3-9(b). I generally recommend that individuals sending requests through the state correctional facility mail system allow three days on each end for mailing time, or thirteen days total. As such, it is my opinion it was not unreasonable for you to file a complaint eighteen days after you submitted the request.

A response, though, 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.

Here, I cannot find the Office took an unreasonable amount of time to produce the requested records. The Office has indicated it is now ready to send the records to you once you remit payment for copies. If your address has changed since you sent the request, you should communicate directly with the Office to confirm your address.

CONCLUSION

For the foregoing reasons, it is my opinion the Office violated the APRA if it did not respond to your request within seven days of receipt of the request.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Samantha Karn, City of Indianapolis Office of Corporation Counsel