



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR

JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 20, 2011

Mr. Howard L. Steele  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 11-FC-250; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Steele:

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.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel for the City, responded on behalf of the Department. Her response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on July 6, 2011 you submitted a written request to the Department for a copy of the crime scene photos regarding a murder investigation concerning Thomas Reeves from March 1980. You also requested a copy of any arrest photos or mug shot of Mr. Reeves. On July 8, 2011, Ryan Hendershott responded in writing to your request and provided that the Department had initiated a search of its records and would notify you upon completion. As of September 26, 2011, the date you filed your complaint with the Public Access Counselor's Office, you have not received any further correspondence or records from the Department in response to your request.

In response to your formal complaint, Ms. Newsom provided that the Department acknowledged receipt of your request within the timelines provided by section 9 of the APRA. The request sought crime scene photos from a homicide investigation that occurred in March 1980, but failed to provide any further identifiers such as the police case number, exact date of the incident, or the court cause number. As the matter was investigated over thirty-one (31) years ago, additional time is required to locate the proper records, assuming the records are still in existence. The search for any prior mug shots of Thomas Reeves may include photos taken from the 1960s and 1970s and requires the Department to search through all relevant case files concerning Thomas

Reeves. In addition, each record must be reviewed pursuant to the APRA before it can be disclosed to you.

As of the date of the Department's response to your formal complaint, the Department is still unsure whether the records sought still exist, but has continued its search. When any records do become available or if the Department is able to definitively provide that no responsive records can be located, it will immediately inform you.

## 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). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Department responded to your request within the timelines proscribed by the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA *requires* the Department 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.*

The Department has provided that due to the age of the records sought, additional time has been required to locate those responsive to your request. Technology that is available to the Department to search for mug shots and arrest photos for recent incidents is not applicable here due to the age of the records, which has required the Department to manually search for any records that are still in existence. Due to the scope of your request and depending on the age of the victim, files going back to the 1960s and 1970s are required to be reviewed to determine if any such records still exist. Further, the Department initial efforts were hindered by the lack of information that was provided by your request. After retrieving the documents that were requested, the Department is required to review them pursuant to the APRA. All the while the Department is responding to your request, it was required to maintain the regular duties required of the office. At this point, over three months has elapsed since you made your original request of the City. While I am sympathetic to the City's challenges in procuring the records you requested due to their age and scope of the request, in my opinion that a delay beyond November 1, 2011 would be unreasonable under the APRA. *See Opinion of the Public Access Counselor 10-FC-282.*

I trust the Department will release responsive records to you as soon as practicable. To the extent that an agency fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant's remedies lie with a court pursuant to I.C. § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City should produce responsive records to you on or before November 1, 2011. A delay beyond that date would be reasonable under the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage  
Public Access Counselor

cc: Andrea Brandes Newsom

