



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

April 27, 2015

Mr. Dustin R. Gipson #247326
Putnamville Correctional Facility
1946 West U.S. Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 15-FC-105; Alleged Violation of the Access to Public Records Act by the Midtown Mental Health Department

Dear Mr. Gipson,

This advisory opinion is in response to your formal complaint alleging the Midtown Mental Health Department, Eskenazi Hospital (“Midtown”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* Midtown has not responded to your complaint despite an invitation to do so on March 23, 2015. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 16, 2015.

BACKGROUND

Your complaint dated March 2015 alleges the Midtown Mental Health Department violated the Access to Public Records Act by failing to provide the records you requested.

On or before February 13, 2015, you requested from Midtown a copy of mental health records for a referenced social security number. As of the date of the filing of your request, you had not received any information responsive to your request.

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 Ind. Code § 5-14-3-1. The Midtown Mental Health Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the



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right to inspect and copy Midtown's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Without the benefit of a response from Midtown, I do not have any argument as to why the record you seek has not been made available. Although there may be an exception to disclosure (if they are not your mental health records), it has not been identified by Midtown. Pursuant to Ind. Code § 5-14-5-5, a public agency must cooperate with this Office in a public access violation allegation. To the extent a record exists, it should be either released to you, or an exception to disclosure be specifically cited by reference.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Midtown Mental Health Department has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor