



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 1, 2015

Anthony J. Baize
P.O. Box 4828
Frankfort, KY 40604

Re: Formal Complaint 15-FC-229; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Baize,

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* ISP has responded to your complaint via attorney, Cynthia Forbes, Esq.. Her response is enclosed for your review. 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 August 10, 2015.

BACKGROUND

Your complaint dated August 8, 2015 alleges that the Indiana State Police violated the APRA by denying you access to public records and failing to acknowledge your request. On July 24, 2015, you sent a letter to ISP requesting a copy of interviews of a named individual. As of the filing of your complaint, ISP had not responded.

ISP responded to your formal complaint acknowledging that it failed to acknowledge your request and that the interviews you requested are investigatory records and therefore exempt from disclosure under Ind. Code § 5-14-3-4(b)(8).

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 Indiana State Police is a public agency for the purposes of the



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APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy ISP'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.

ISP concedes it failed to acknowledge receipt of your request within seven days therefore a violation has occurred. It is correct, however in stating law enforcement agencies have the discretion to withhold investigatory records. You have subsequently indicated, however, that the public records you seek may have been introduced in the court during criminal litigation. If this is the case, the records would cease to be investigatory records and are court records subject to disclosure. It is unclear whether ISP has the information required to determine whether they were the part of adjudication. I encourage ISP, however, to revisit the issue to determine if they were disclosed to the judiciary and if so, release the records to you.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Cynthia Forbes, Esq.