



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 2, 2015

Miami Correctional Facility  
Rafael Del Rio 219478  
3038 W. 850 South  
Bunker Hill, IN 46914

*Re: Formal Complaint 15-FC-233; Alleged Violation of the Access to Public Records Act by the East Chicago Police Department*

Dear Mr. Del Rio,

This advisory opinion is in response to your formal complaint alleging the *East Chicago Police Department* ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* As of the writing of this complaint, the Department has not responded, despite an invitation to do so on August 14, 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 August 14, 2015.

## BACKGROUND

Your complaint dated August 10, 2015 alleges that the East Chicago Police Department violated the Access to Public Records Act by not providing the records you requested.

On July 20 and July 21, you submitted written requests, seeking records pertaining to the case *Rafael Del Rio v. State of Indiana*, Cause No. 45G02-0907-MR-5. Specifically, you were seeking personnel files related to Sgt. Juan Beltran and Detective Eduardo Hernandez. You also requested a copy of any recording, audio or visual, pertaining to the interrogation of Rafael Del Rio associated with the above-referenced cause number.

As of the writing of your complaint, you had not received a response. Further, the department has not responded to this office.



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## 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 *East Chicago Police Department* is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy Department’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 public agency may deny a public records request if the record is specifically exempted from disclosure by law or if the APRA provides the public agency discretion over the disclosure.

If the request is mailed or sent by fax or email, the public agency must respond within seven days of the receipt of the request. The APRA requires only a response and not the actual production of the records within this specified time period, however the actual records must be produced in a reasonable period of time. Failure to respond within seven calendar days as required by law constitutes a denial of the request. If the request is made in writing, the public agency may only deny the request *in writing*. The denial **must** include a statement of the specific statutory reason for nondisclosure of the information and the name and title of the person responsible for the denial.

Here, you mailed two separate written requests to the Department. The Department did not respond in seven days to either request. The lack of response constitutes a denial of the request. Because Mr. Del Rio’s request was mailed in writing, the Department may only deny the request *in writing*. The written denial must include a statement of the specific statutory reason for nondisclosure of the information and the name and title of the person responsible for the denial to be in compliance with the APRA. Thus, the Department did not comply with the APRA in denying the request.

Further, public agencies are required by Ind. Code § 5-14-5-5 to cooperate with this office during the formal complaint process. Such cooperation requires public agencies to respond to formal complaints filed under the APRA with the Public Access Counselor’s office.



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In this case, you filed a formal complaint with this office and the Department has failed to respond regarding the complaint. Without the benefit of a response, I cannot determine if the Department's denial was appropriate.

The Department should be mindful that in certain circumstances, the APRA grants public agencies discretion in determining which public records should be disclosed. Ind.Code §5-14-3-4(b)(1) permits law enforcement agencies the discretion to withhold investigatory records. Investigatory records are records compiled during the course of an investigation of a crime. However, certain law enforcement records are not considered investigatory and therefore must be made available for inspection and copying. See Ind. Code §5-14-3-5.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the East Chicago Police 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