

December 30, 2003

Mr. William A. Meeks  
DOC No. 918940  
Indiana State Prison  
P.O. Box 41  
Michigan City, Indiana 46361-0041

*Re: Formal Complaint 03-FC-137  
Alleged Denial of Access to Public Records by the Fulton County Sheriff's  
Department*

Dear Mr. Meeks:

This is in response to your formal complaint alleging that the Fulton County Sheriff's Department (Sheriff's Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by denying you access to public records. Your complaint attaches a copy of the Sheriff's Department's response to your request indicating that it forwarded the request to the county prosecutor for review toward further action. I find that the Sheriff's Department did not violate the APRA.

#### BACKGROUND

On November 10, 2003, you signed a form records request addressed to the Sheriff's Department requesting a copy of "any and all arrest information" on a particular individual. The Sheriff's Department responded on November 25, 2003. The response did not decline to produce documents responsive to your request and that are otherwise subject to disclosure. Rather, the Sheriff's Department responded that it was forwarding the request to counsel for review toward further action as appropriate under the law. The response further identified the name and address of the county prosecutor who would be reviewing the request for further action. On December 2, 2003, you signed your complaint subsequently filed with this office alleging on the basis of that response that the Sheriff's Department denied you access to records in violation of the APRA.

## ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9.<sup>1</sup> A satisfactory response need not include production or expressly decline to produce the documents that are responsive to the request. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. The APRA does not specify a time for production or inspection of responsive records, but merely requires that records be produced within a reasonable time of the request. What constitutes a reasonable time will vary with the nature of the request and the office from which the records are requested. Production need not interfere with the regular business of the public agency.

In this matter, the public agency responded to your request in writing and stated its intent to forward the request to counsel, specifically, the county prosecutor, for review toward further action as required by law. This is not a denial of access to public records. Indeed, given that the information you seek may be included in records that also contain information that is confidential and exempt from disclosure under Indiana Code 5-14-3-4 (*e.g.*, investigatory records, attorney work product, criminal intelligence information, *etc.*), the Sheriff's Department's reaction to your request was entirely appropriate.<sup>2</sup>

That said, I note that Indiana Code 5-14-3-5 requires that the Sheriff's Department maintain disclosable records containing specific and limited information regarding criminal and other complaints, and the arrest and incarceration of individuals falling within its jurisdiction. Thus, if the Sheriff's Department maintains any records that are responsive to your request -- that is, records containing arrest information for the individual who was the subject of your request -- it must produce those records.<sup>3</sup> Certainly, the Sheriff's Department may review or utilize counsel to review any responsive records to avoid inadvertent disclosure of information that is exempt from production; however, its failure to thereafter produce responsive and nonexempt records within a reasonable time of receiving your written request may be found to violate the APRA in any future complaint you bring with this office or in the courts. Your current complaint was brought only three weeks after you signed the request, and within seven days of receiving the response from the Sheriff's Department. Given the nature of the records requested and the timing of the request, response, and complaint, I do not think that this short passage of time compels a finding that the Sheriff's Department denied you access to records in violation of the APRA.

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<sup>1</sup> There is no evidence of when you sent the request or when the Sheriff's Department received the request. In any event, your complaint does not challenge the *timeliness* of the Sheriff's Department's response, and no opinion on that issue is offered here.

<sup>2</sup> A better response would have indicated an anticipated date for production or other appropriate action.

<sup>3</sup> On December 30, 2003, the undersigned spoke with the county prosecutor who indicated that the Sheriff's Department would be reviewing its records and producing, pursuant to Indiana Code 5-14-3-5, any documents that are responsive to your request.

CONCLUSION

For the reasons set forth above, I find that the Sheriff's Department did not violate the APRA and that your complaint is without merit.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Rick Brown, Fulton County Prosecutor