

August 5, 2004

Mr. Jerald W. Perry
10334 Whispering Winds Street
Indianapolis, IN 46234

*RE: Formal Complaint 04-FC-107; Alleged Denial of Access to Public
Records by the Bartholomew County Sheriff*

Dear Mr. Perry:

This is in response to your formal complaint alleging that the Bartholomew County Sheriff's Department ("Department") violated the Access to Public Records Act (APRA) when the Department did not respond in writing to your request for documents. You also complain that the Department has denied you disclosure of the record. In particular, you assert that on June 4, 2004 you hand-delivered to the Department your written request for access to records relating to a sheriff's auction of property held on October 24, 2003 at 1650 N. State Road 46 in Columbus, Indiana. Your "attorney-in-fact" returned to the Department on June 11 with a renewal of the same request. You state that at that time, Juanita Green of the Sheriff's Department told you that, "although Bartholomew County deputies had been hired to preside at the October 24, 2003 auction," the Department had no records relating to said auction. No written response has been provided to you. You also claim that the Department has been unresponsive to your legal claims that your personal property inside the building at 1650 N. State Road 46 in Columbus should not have been subject to sale. You state that the real estate itself (not contents) was subject to a Sheriff's sale on June 10, 2003.

In the Department's response to the complaint, which is enclosed for your reference, the attorney Peter Campbell King states that the Department has no documents relating to an auction dated October 24, 2003. Mr. King does not allege that this response was given to you in written form at any time.

For the reasons stated below, I find that the Department's failure to respond in writing to your written request for records was a violation of the Access to Public Records Act. I decline to offer any advice or analysis with respect to your complaint concerning the Department's response to your efforts to preserve your personal property allegedly stored within the 1650 N. State Road 46 real estate. Also, I find that the Sheriff's Department did **not** violate the Access to Public Records Act by its failure to produce records not in its possession.

ANALYSIS

Ind. Code 5-14-3-3(a) provides that any person has the right to inspect and copy the public records of any public agency. The Office of the Sheriff of Bartholomew County is a public agency subject to the requirements of the APRA, and every record maintained by the Department is a "public record" of the agency. The APRA requires that an agency issue a denial in writing when a request for public records is made in writing. The denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial. I.C. 5-14-3-9(c). To the extent that the Department did not possess the requested record, it was incumbent on the agency to issue a denial in writing stating that it did not have records relating to a sheriff's sale of the property for the stated date. Because the Sheriff's Department had not responded to your request for public records in writing, as it was required to do, it has not met the requirements of the Access to Public Records Act.

In its response through Attorney King, the Department states that it has no documents relating to an auction dated October 24, 2003. An agency is not required to produce a record that it does not have. Because your request for records specified a date for the auction, the Department could respond, if accurate, that it did not possess a record relating to an auction on that particular date. In the future, you may wish to submit a written request to the Department for any records relating to a sheriff's sale of the building or its contents at 1650 N. State Road 46 in Columbus, Indiana, without specifying an exact date. This or a similar request may elicit the documents that you seek.

CONCLUSION

For the foregoing reasons, I find that the Bartholomew County Sheriff's Department violated the Access to Public Records Act when it failed to issue a written response to your written request for records. I also find no violation of the Access to Public Records Act where the Department has stated it does not have responsive records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Peter Campbell King, w/out enclosures