

October 21, 2004

Mr. Zolo A. Azania, #4969
Indiana State Reformatory
P.O. Box 30
Pendleton, IN 46064-0030

Re: Formal Complaint 04-FC-173; Alleged Violation of the Access to Public Records Act by the Gary Police Department

Dear Mr. Azania:

This is in response to your formal complaint alleging that the Gary Police Department ("Police Department") violated the Access to Public Records Act ("APRA") by failing to respond to your request for access to public records. For the following reasons, I find that the Gary Police Department did not violate the Access to Public Records Act.

BACKGROUND

On August 17, 2004, you mailed to the Gary Police Department a request for copies of public records. Specifically, you sought any records specifying the protocol for conducting official investigations of the police officers who have discharged their service weapons in the line of duty and the protocol for the official investigations of shootings by police officers involving the public. You received no response to your request. On September 12th you submitted an appeal to the Gary Police Department asking again that those records requested be provided to you. Having received no response to either request, you filed a formal complaint, which was received by this office on September 22, 2004. I forwarded a copy of your complaint to the Gary Police Department, and Chief Garnett Watson responded. I have enclosed a copy of his response for your reference.

During a telephone conversation with this office, Chief Watson stated that the Gary Police Department had not received your August 17th request. In his written response, Chief Watson states that the Police Department received your September 12th request on September 16th, and that he responded to that request on September 20th. His response to you had been sent to the Allen County Jail, which is the address on your request. However, when the Police Department's response was sent to you, you had been moved from the Allen County Jail to the

Indiana State Reformatory. As a result, on October 5th, Chief Watson's letter was returned to him as undeliverable.

ANALYSIS

The Gary Police Department is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. Ind. Code §5-14-3-9(b). A public agency may 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 of the requested document.

When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b). However, a public agency must first receive a request in order to be responsible for a response under I.C. § 5-14-3-9. *Opinion of the Public Access Counselor 03-FC-25*.

The Gary Police Department denies receiving your August 17th request. You provide no evidence establishing that the request was posted by you on that date or that it was subsequently received by the Gary Police Department. Accordingly, I decline to find the Gary Police Department in violation of the Access to Public Records Act for failing to timely respond to your request for records it alleges it never receive.

The Gary Police Department acknowledges receiving your request of your September 12th request on September 16th, and states that it responded to that request by September 20th. The Police Department has provided this office with a copy of that response, and I enclosed it with this letter. Chief Watson forwarded the response to the address you provided to him on your correspondence. If you had been moved between the time your request was made and the time you filed your formal complaint, you should have contacted the Gary Police Department to advise them so that the response could be forwarded to the correct address. I find that the Gary Police Department responded to your request within the seven (7) day period required by the APRA. Accordingly, I find that the Gary Police Department did not violate the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the Gary Police Department did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chief Garnett Watson