

January 13, 2005

Sent Via Facsimile

Mr. John Emry
62 W. Jefferson Street
Franklin, IN 46131-2311

Re: Formal Complaint 04-FC-228; Alleged Violation of the Access to Public Records Act by the Jennings County Sheriff's Department

Dear Mr. Emry:

This is in response to your formal complaint alleging that the Jennings County Sheriff's Department violated the Access to Public Records Act ("APRA") by failing to respond to your request for records regarding a former inmate. I find that the Jennings County Sheriff's Department failed to respond to your request, in violation of APRA.

BACKGROUND

You requested a number of records from the Jennings County Sheriff's Department ("Sheriff") by way of letter dated October 8, 2004. When you received no response, you again mailed a request for the same records on December 2, 2004. You allege that the Sheriff did not respond as of the date that you filed your complaint, December 14, 2004.

In your December 2 letter to the Sheriff, you requested: 1) the entire medical file for Sherman Nicholson for the period from January 1, 2004 until his release; 2) Mr. Nicholson's entire inmate or prisoner file and arrest record; and 3) a copy of the policies and procedures for the Jennings County Jail with respect to housing inmates and keeping them separate from DOC prisoners and dangerous inmates. You requested that the Sheriff describe any document that he withholds and the reason the document was not provided, in his response to you. You provided proof of mailing of the December 2 request, showing that the request was received on December 3. You also enclosed what appears to be a copy of a signed medical authorization from Mr. Nicholson.

I sent a copy of your complaint to the Sheriff of Jennings County. In response, I received a letter from attorney A. Howard Williams, to whom the Jennings County Sheriff had forwarded your complaint. Mr. Williams' four-page letter responded on two fronts. Mr. Williams admitted that the Sheriff had not responded in a timely manner to your request, and offered an apology. He also appeared to offer a substantive response to your particular record request.

I summarize Mr. Williams' substantive response as:

- 1) medical records will be provided upon receipt of a valid medical consent;
- 2) the lock-up information will be provided, but will be limited to only that information required under IC 5-14-3-5(b);
- 3) with respect to your third request for policies and procedures for the Jennings County Jail, the request is overbroad and not reasonably particular, and in addition, the Sheriff will make available any personnel records that are required to be disclosed under IC 5-14-3-4(b)(8).

He also claims the right to not disclose any responsive records that are deliberative materials under IC 5-14-3-4(b)(6), are investigatory records of law enforcement under IC 5-14-3-4(b)(1), or is a job title or job description of a law enforcement officer under IC 5-14-3-4.3.

Mr. Williams also promised to assist in the future to ensure that any of the Indiana sheriffs respond timely to your requests if you forward a copy of your request to Mr. Williams as well as to the sheriff. No records accompanied his response and he invited you to make your request more specific.

ANALYSIS

The public policy statement of the APRA says:

“[A]ll persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the 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.” Ind.Code 5-14-3-1.

Hence, when you submitted your request for records to the Sheriff, he was duty-bound to respond to your request. Denial of a record occurs when seven days elapse from the date the request is received without a response from the agency. IC 5-14-3-9(b). Your second request for records was denied on December 10. This denial was a violation of the Access to Public Records Act.

As Mr. Williams acknowledges, many of the records that you sought are disclosable records. Although your complaint was filed because of the Sheriff's failure to respond at all, I write to offer the following with respect to the substantive response to your complaint. First, Mr. Williams states that he is not in possession of a release of medical records executed by Mr. Nicholson. It appears, however, that you sent a release to the Sheriff. In the event that the

Sheriff has misplaced the medical release or there is some legal infirmity in it, the Sheriff or his attorney should contact you to request another release.

Second, Mr. Williams offers several exemptions under the APRA that would limit or restrict the release of information. This appears to be in response to your request for jail policies and procedures with respect to housing inmates and keeping them separate from DOC prisoners and dangerous inmates. He also states that your request is not reasonably particular.

A request for inspection and copying must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). Although your request for the policies or procedures could be broadly construed to include “virtually every operational aspect of the Jennings County Jail,” an agency opting to construe a request unnecessarily broadly does not render the request not reasonably particular. In any case, it is incumbent on the agency to seek clarification of the requester when the request for records is unclear or ambiguous.

In his response, Mr. Williams lists three exemptions that he would apply to your request for policies and procedures on inmate segregation. It is possible that some of the policies and procedures could be subject to nondisclosure, but it is not adequate to apply several exemptions to a set of records that are not all covered by all those exemptions. Rather, the law requires that the agency identify the specific record or part of a record being withheld and the particular exemption that authorizes withholding that record. IC 5-14-3-9(c)(2). Where, as here, responsive records are not subject to an exemption as a whole, but may be subject to one exemption or another, I read the APRA to require some specificity in claiming exemptions. That said, it is not necessary for an agency to itemize each and every document that is responsive to a request for separate treatment in a response. It would be adequate to group similar documents that are subject to the same exemption. For example, in this matter the Sheriff could respond to the request for policies and procedures by stating that several policies contain technical security information, and those are subject to nondisclosure under IC 5-14-3-4(b)(10); or, as another example, the Sheriff could respond that “each policy bears the name and job title of a particular law enforcement officer; therefore we are exercising our discretion to redact his job title, under IC 5-14-3-4.3.”

With these guidelines, it is my hope that the Sheriff will undertake a review of your December 3 request, disclose those documents that are disclosable within a reasonable time, and provide to you a written response that conforms to IC 5-14-3-9(c)(2) for any documents to which it may claim an exemption.

CONCLUSION

For the foregoing reasons, I find that the Jennings County Sheriff’s Department violated the Access to Public Records Act when it failed to respond to your request for records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. A. Howard Williams