

August 5, 2004

Mr. Lonnie Garner Jr., #870040  
Wabash Valley Correctional Facility  
P.O. Box 2222  
Carlisle, IN 47838

*Re: Advisory Opinion 04-FC-109; Alleged Denial of Access to Public Records by  
the Howard County Sheriff's Department*

Dear Mr. Garner:

This is in response to your formal complaint, which was received on July 6, 2004. You have alleged that the Howard County Sheriff's Department ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Ind. Code §5-14-3. Specifically, you claim that the Sheriff denied your request for a copy of the Class C Felony Unlawful Possession of a Firearm warrant issued for you in November 2000. Officer Steven Rogers, of the Howard County Sheriff's Office, responded in writing to your complaint. A copy of his response is enclosed for your reference.

#### BACKGROUND

According to your complaint, on June 8, 2004, you requested from the Howard County Sheriff Department's a copy of the Class C felony arrest warrant which was issued for you by the Howard County Prosecutor's Office issued on or about November 14, 2000 to November 16, 2000. Some time after your first request, you submitted to the Department substantially the same request. On June 22, 2004, the Department sent to you a copy of a Class B unlawful possession of a firearm warrant along with a letter advising you that the warrant sent to you was the only 2000 warrant in their records. Furthermore, they advised you that you might be able to obtain the records you seek through the court.

You filed a complaint alleging that the Class B warrant is "clearly not the arrest warrant requested," and that you have therefore been denied access to the records you request. On July 8, 2004, I forwarded a copy of your complaint to the Department.

Officer Steven Rogers replied, stating that they sent you the only warrant in their records, and that the best source of the information you seek is the court record.

### ANALYSIS

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in section 4 of the Access to Public Records Act. I.C. §5-14-3-3(a). The Department is a public agency for purposes of the APRA. A "public record" means any writing, paper, report, study, map, photograph, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

A public agency is not required to create a record in response to a request, and it is not required to produce a record it does not have. If an agency does not have a responsive record, it should say so, but its failure to produce a record it does not have and is not required to have is not a denial under the APRA.

The Department tried to accommodate your request by sending you a copy of the warrant they did have and by directing you to the appropriate agency from which you may possibly obtain those records. The Department's correspondence to you indicates that there were no records responsive to your request inasmuch as they have no copies of a Class C warrant issued for you in 2000. Your complaint and supporting documents do not establish otherwise. It is my opinion that the failure to produce records that do not exist is not a denial under the Access to Public Records Act.

### CONCLUSION

For the reasons set out above, it is my opinion that the Howard County Sheriff's Department did not violate the Access to Public Records Act with respect to your public records request.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Officer Steven R. Rogers, w/out enclosures