

June 20, 2005

Herbert Foust  
Putnamville Correctional Facility  
DOC # 124101  
1946 W. US Hwy 40  
Greencastle, IN 46135

*Re: Formal Complaint 05-FC-101; Alleged Violation of the Access to Public Records Act by the Indiana State Police.*

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Indiana State Police (“ISP”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for records within seven (7) days and by withholding disclosable information.

#### BACKGROUND

On May 20, 2005 you filed a formal complaint with the Office of the Public Access Counselor alleging that the ISP had violated the APRA. Your complaint was assigned Formal Complaint # 05-FC-101.

Your complaint alleges that you mailed a request for records to Indiana State Police Detective T.W. Bates on April 10, 2005. As of May 17, 2005 you had not received a response to your request. You noted that Detective Bates had always been professional and courteous in communicating with you, so you thought that he must have overlooked your request. Your request was for the names of any persons charged in a specified forgery investigation.

I forwarded a copy of your request to Detective Bates. He responded by phone on June 1, 2005. He stated that he had received the request. He apologized for not responding to your request because he did not think he needed to respond, as he had no responsive documents. Following our conversation Detective Bates followed up on the request by forwarding you a letter explaining that no criminal charges had been filed in the investigation.

Additionally, you requested that your complaint receive priority status; however you failed to provide supporting information as to why your complaint should receive priority status under 62 IAC 1. As your request for priority status is unsupported, your complaint did not receive priority status.

#### ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours. IC 5-14-3-3(a). Under the Access to Public Records Act, a public agency is required to respond to a request for records within a certain period of time. For written requests, the public agency is required to issue a response within seven (7) calendar days. IC 5-14-3-9(b). Failure to respond is deemed to be a denial of the record. If the public agency intends to deny a record, the denial must be in writing and include a statement of the specific exemption or exemptions that apply to the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). A response may be acknowledgment that the agency received the request and a statement regarding whether the public agency has responsive records.

In this instance, the ISP was required to provide a response within seven (7) days of receipt of the request, and failed to do so. Additionally, the ISP was required to inform you whether a record exists that is responsive to your request. Where you are asking for charging information for a particular criminal investigation, if the ISP has not yet charged anyone in the investigation the ISP is not required to create a record to respond to your request for information.

#### CONCLUSION

For the foregoing reasons, I find that the Indiana State Police violated the Access to Public Records Act when it failed to respond to your request within seven (7) days. The Indiana State Police should have notified you that no record existed that was responsive to your request. However, it is not a violation of the Access to Public Record Act to decline to provide you with documents that do not yet exist.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Detective T.W. Bates  
Major Anthony Sommer