

July 22, 2005

Herbert Foust
D.O.C. # 124101
Putnamville Correctional Center
1946 W. US #40
Greencastle, IN 46135

Re: Formal Complaint 05-FC-121; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff's Department.

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Lake County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records within seven (7) days of receipt of the request.

BACKGROUND

On June 22, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-121. You made a request for public records on June 3, 2005. As of June 20, 2005 you state that you had not received a response from the Department. Further, you allege that the Department cannot deny it has the records because you possess information showing that the Department received the subjects in custody.

My office spoke with Commander Zon Haralovich by phone on June 22, 2005. Commander Haralovich subsequently faxed several documents in response to your complaint on June 22, 2005 and June 27, 2005. Copies of those documents are enclosed for your reference. Commander Haralovich stated that he did in fact respond to your request by certified mail. He provided a copy of the letter that he provided to you. The letter was dated June 22, 2005; however, Commander Haralovich stated that the date on the letter was incorrect. He also provided a copy of the Certified Mail card that indicates that the date of delivery on the letter was June 22, 2005. It is likely, therefore, that the response letter was in fact mailed some time

prior to June 22, 2005. Additionally, the Department was not able to indicate the date upon which it received your request.¹

ANALYSIS

An Agency is Required to Respond within Seven (7) Days of Receiving a Request for Public Records.

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The public agency's duty to respond is not prompted until receipt of the request for public records. The Department would likely have received your request no later than June 8, 2005, assuming the usual three (3) day mailing time. Assuming three (3) days for the mailing of its response to you which was delivered to you on June 22, the Department's response was most likely mailed on June 17, 2005 at the earliest. Given these generous assumptions for mailing time, the Department's response would have been tardy by two (2) days. If the Department failed to respond within seven (7) days of receipt of your request, then it violated the APRA.

The Agency Does Not Possess Responsive Records.

Additionally, you have complained of the Department's response that it had no responsive records that indicated it had arrested either person. Pursuant to IC 5-14-3-5(a), a law enforcement agency must maintain and disclose certain limited information regarding persons arrested by that agency. IC 5-14-3-5(a). In addition IC 5-14-3-5(b) requires that an agency make certain information available regarding a person's receipt in a jail or lock-up.

You stated that the Department must have records of an arrest or receipt in jail or lock up of Mr. Caudillo as you have "booking" information from the Porter County Sheriff's Office ("Porter County") indicating that he was released to the Department. Commander Haralovich has explained that Mr. Caudillo was not arrested by the Department, but only transported by the Department at the Porter County Department's request. As your request for records was for the information disclosable under IC 5-14-3-5 the Department's response that it had no responsive records was appropriate. The Department has not arrested those individuals and therefore, did not have any records that it had arrested those individuals.

¹ You forwarded your request to this Office and requested that I forward the request to the Department. I did place the request in the mail; however, I informed you that I would not provide this service again. I placed the letter in the outgoing mail at my office in the state government center complex on June 3, 2005. I cannot say with certainty upon which date your request left the state government center. I will note that June 3, 2005 was a Friday and that the government center does not have mail operations over the weekend so your letter most likely did not leave the government center until sometime the following week.

The Department is not required to research the records of other agencies in order to provide IC 5-14-3-5 information to you. However, it has done so in an effort to show you that it was not the arresting agency in the instances that you have indicated. The Department has made an affirmative statement to you that it does not maintain the records you seek. If you continue to believe that the Department has other responsive documents that it is not providing, then your only recourse is to bring an action under IC 5-14-3-9(e).

CONCLUSION

The Lake County Sheriff's Department should have responded to your request within seven (7) days of receiving the request. Additionally, the Lake County Sheriff's Department complied with the Access to Public Records Act when it affirmatively stated that it does not maintain the records that you requested pursuant to IC 5-14-3-5.

Sincerely,

Karen Davis
Public Access Counselor

cc: Commander Zon Haralovich