



# STATE OF INDIANA

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Karen Davis

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September 19, 2005

Tyrone Frazier  
DOC # 910476  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

*Re: Formal Complaint 05-FC-174; Alleged Violation of the Access to Public Records Act by the Indianapolis Police Department*

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Indianapolis Police Department ("IPD") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records.

### BACKGROUND

You filed two formal complaints against the IPD on August 19, 2005. Your complaints are regarding two requests for records that you made to the IPD. One was for a criminal history record; the other was for copies of a search warrant and probable cause affidavit. In your complaints you stated that you had requested the records from the IPD. You do not provide the date upon which your requests were made; however, you indicate August 1, 2005 as the date of denial for both requests.

Lieutenant Jeffrey Decker responded to your formal complaint on behalf of the IPD by letter dated August 30, 2005. A copy of that letter is enclosed for your reference. Although Lt. Decker indicated that responses to your requests were made on August 17, 2005 and August 22, 2005, the IPD does not indicate when it received your requests. The IPD informed you in the August 17<sup>th</sup> letter that the search warrant and probable cause affidavit are kept by the Marion County Superior Court. The August 22<sup>nd</sup> letter denied your request for a criminal history citing IC 10-13-3-27 as the basis for the denial.

### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 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). You did not allege when you mailed your request to the IPD. Likewise the IPD did not indicate when your request was received by the IPD. If the IPD's responses of August 17<sup>th</sup> and

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August 22<sup>nd</sup> were mailed to you more than seven days after your requests were received by the IPD, the responses were tardy.

I note two additional issues raised by the IPD's responses to you. The IPD's August 17<sup>th</sup> letter states that the information you requested "does not fall within the purview of the Indianapolis Police Department." It is unclear whether the IPD intended to aver that it does not maintain the records of the warrant and probable cause affidavit. If so, then it may properly direct you to a separate agency that does maintain those records. However, if the IPD does maintain the records it cannot direct you to a different agency in its discretion. For future reference, the IPD should clearly indicate whether it maintains the requested records.

The IPD's August 22, 2005 denial of your request for a criminal history may have been appropriate. Limited criminal history information may not be released except under specific circumstances. IC 10-13-3-27. "Limited criminal history" is defined as information with respect to any arrest or criminal charge, which must include a disposition." IC 10-13-3-11. Limited criminal history is subject-specific; in other words, a limited criminal history relates to a particular person about whom the information pertains. *See generally* IC 10-13-3. If you believe that you are entitled to the information pursuant to IC 10-13-3-27, I would advise you to inform the IPD of the circumstances that entitle you to the information you seek.

#### CONCLUSION

For the foregoing reasons, I find that if the Indianapolis Police Department failed to respond to your requests for records within seven days of receiving the requests then it violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Lieutenant Jeffrey Decker