



STATE OF INDIANA

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October 19, 2005

Charles M. Knoll
1308 W. Ryle Drive
Greensburg, IN 47240

Re: Formal Complaint 05-FC-189; Alleged Violation of the Access to Public Records Act by the Harrison County Sheriff's Department

Dear Mr. Knoll:

This is in response to your formal complaint alleging that the Harrison County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") by denying you access to public records.

BACKGROUND

On September 14, 2004 you appeared at the Department, in person, and orally requested a criminal history check from the Department. The clerk told you that she could not release the information without the signed authorization of the subject of the record. Upon your insistence that the information is a public record the clerk summoned Sheriff Deatrick to speak with you. The Sheriff again denied your request. He informed you that the Clerk's office maintains a public computer terminal that you could look at. You filed a formal complaint with the Office of the Public Access Counselor on September 19, 2005.

Sheriff Deatrick responded to your formal complaint by letter dated October 3, 2005. A copy of the letter is enclosed for your reference. Sheriff Deatrick indicated that he had conferred with the prosecutor's office and was informed that he was not to release any information on any individual without consent unless the request was made according to the office's procedure. Sheriff Deatrick enclosed a copy of the procedure which is posted on the window of the office. He asserts that you refused to follow the posted procedure.

The policy, dated December 4, 2004 states as follows:

"The person must specify what information they are requesting.
The request will be in written form.
We have 24 hours to get that information for them.
If the request arrives by mail we will have 7 days to provide the information."

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with 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. Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in IC 5-14-3-4. IC 5-14-3-3(a). A public agency, at its discretion, may require public records requests to be in writing or on a form provided by the agency. IC 5-14-3-3(a)(2).

A request to inspect or copy public records may be oral or in writing. See IC 5-14-3-3(a)(2). If the request is made orally, either in person or by telephone, the public agency may deny the request orally. IC 5-14-3-9(c). In this context, a denial of disclosure occurs when the person making the request is physically present in the office of the public agency and the person designated by the agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when the request has been made. IC 5-14-3-9(a)(1).

A public agency is required to make a response to an oral request within twenty-four (24) hours and to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. IC 5-14-3-9(b). An agency’s response to a written request must be in writing, and must be sent within seven (7) days of receipt of the request. IC 5-14-3-9(c). A denial made in writing must include a statement of the specific exemption or exemptions authorizing the withholding of the public record and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c)(2)(A). Of course, this does not apply if the request was made orally, and the denial was oral. As your request was oral, it was appropriate for the Department to deny the request orally.

A public agency may deny disclosure of those records declared confidential by state statute. IC 5-14-3-4(a)(1). You requested a criminal history check from the Department. “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. Limited criminal history information may not be released except under specific circumstances. IC 10-13-3-27. If you believe that you are entitled to the information pursuant to IC 10-13-3-27, I would advise you to inform the Department of the circumstances that entitle you to the information you seek. It would have been helpful if the Department could have explained to you that a criminal history could only be obtained under the limited circumstances provided for in IC 10-13-3-27. I enclose state form 8053, which can be used to obtain a limited criminal history from the state police, if you qualify.

Pursuant to IC 5-14-3-5 law enforcement agencies are required to make certain information concerning the arrest and summons of a person for an offense and the receipt of a person in a jail or lock-up available for copying and inspection. Additionally, law enforcement agencies must maintain a daily log or record that lists suspected crimes, accidents or complaints that includes specific information. The information required to be made available for inspection and copying pursuant to IC 5-14-3-5 is not considered limited criminal history information and must be disclosed by the Department. If you requested a criminal history, the Sheriff could have suggested that some of the information you seek may be available pursuant to IC 5-14-3-5; however, he was not obliged to. You believe that the Sheriff should have made the records

available to you because you were able to obtain records from Clark and Floyd Counties. It is unclear what records were provided to you by those counties; they may have provided information that was not a limited criminal history.

Additionally, the Department told you that it is departmental policy not to release information on someone without that person's permission unless you follow the procedure. However, nothing in the procedure covers a situation in which a person is requesting a record concerning another person. The Department's policy does not comply with the APRA to the extent that it applies to all of the Department's records. If you are not qualified to get a limited criminal history on the person you seek, the Department is correct that only a signed release would permit disclosure. However, the Department must disclose public records unless it is authorized by a specific exemption to withhold the record. IC 5-14-3-3 and IC 5-14-3-4. While some records may be subject to an exemption that allows disclosure in limited circumstances, without a subject's authorization, that is an unusual circumstance. Specifically, records required to be disclosed pursuant to IC 5-14-3-5 are not subject to such a limitation and must be disclosed to you, even if you are not the subject of the information.

Finally, Sheriff Deatrick stated that you refused to follow the procedure for requesting a record. The procedure states that a request for records must be written. Public agencies have the discretion to require that requests for public records be made in writing on or in a form provided by the agency. IC 5-14-3-3(a)(2).

CONCLUSION

For the foregoing reasons, I find that the Harrison County Sheriff's Department did not violate the Access to Public Records Act when it denied your request for a criminal history check. The Department should have explained to you that you must meet the requirements of IC 10-13-3-27 in order to obtain a criminal history check.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mike Deatrick