

February 17, 2005

Mr. Robert C. Williams
D.O.C. #915553
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-19; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Department

Dear Mr. Williams:

This is in response to your formal complaint alleging that the Marion County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") by denying you access to records. I find that the Department failed to timely respond to your request for records, but the Department did not err in failing to give you a record that it does not maintain.

BACKGROUND

You requested a copy of the Department's policy regarding lockdown procedures. You filed your formal complaint with my office on January 19, 2005. I sent a copy of your formal complaint to the Marion County Sheriff. Attorney Kevin Charles Murray responded, a copy of which is attached for your reference. He states that delivery of your letter, addressed specifically to Deputy Chief Patrick Commiskey, was delayed because the deputy was on road patrol during the time he would have received your letter. The letter was eventually referred to Rachel Gohman, the Department's legal liaison. The Department responded to you on January 14, 2005, stating the reason you were put on lockdown. The letter does not contain any indication that the Department does not have written policies regarding lockdown, but Mr. Murray's response indicates that no written policies exist.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind.Code 5-14-3-3(a). When a public agency receives a request for a record by U.S. Mail, the public agency must respond to the request within seven days of its receipt. Where the request was in writing, the agency must respond in writing by stating its reason for denying the record, any exemptions that apply to the record with citation to the legal authority for denying the record, and the name and title or position of the person denying the record. IC 5-14-3-9(c).

It appears based on the facts that I have before me that the Department did not timely respond to your request. The January 14 letter was sent more than seven days after the date your letter was received by the Department (which I believe to be January 3 if not earlier). This tardy response is not excused by the fact that the letter was addressed to an individual who was not immediately available to receive it. The receipt date of a request for records is the date that a representative of the public agency receives the letter, for purposes of the APRA.

Also, the January 14 response letter, although it gave you some information regarding the reason you are in lockdown, did not state whether the agency maintained any written policies regarding lockdown determinations, which was the record that you were requesting. This letter was not an adequate response under the APRA, even where the record is not maintained by the public agency. If the public agency does not maintain a record, it should so state in its initial response, or a later response if the agency cannot immediately determine whether the record exists.

However, I note that the Department is not required to produce a record that it does not maintain.

CONCLUSION

For the foregoing reasons, I find that the Marion County Sheriff's Department violated the Access to Public Records Act by failing to timely and adequately respond to your request for records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Kevin Charles Murray