



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

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November 14, 2005

Mr. David Paul Allen  
5231 Hohman Avenue, Suite 703  
Hammond, IN 46320

*Re: Formal Complaint 05-FC-215; Alleged Violation of the Access to Public Records Act by the Lake County Sheriff*

Dear Mr. Allen:

This is in response to your formal complaint alleging that the Lake County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA") by failing to respond to your request for public records.

### BACKGROUND

On October 14, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-215. In your formal complaint you alleged that the Sheriff violated the APRA by failing to respond to your request for public records. According to your complaint, you mailed a written request for records to the Sheriff on September 30, 2005 via certified mail. You have a receipt confirming delivery of your request on October 3, 2005. You state that as of October 14, 2005 you had not received a response from the Sheriff. You requested certain records pertaining to the August 24, 2005 arrest of Benjamin Jacobson by the Lake County Sheriff. Specifically, you requested: the warrant authorizing the arrest; any record showing the receipt of the warrant by the Lake County Sheriff's Department, and any return or other report by the Lake County Sheriff's Department upon the warrant or arrest.

Mr. John M. Kopack, Counsel for the Lake County Sheriff's Department responded to your complaint by letter dated October 31, 2005. A copy of that letter is enclosed for your reference. Mr. Kopack did not dispute that the Sheriff did not respond to your request. He explained that the request was not forwarded to the correct personnel for a response when it was received.

Mr. Kopack also indicated that he intended to have the requested records delivered to his office by November 2, 2005 and would forward the records to you as soon as he received them. He stated that the Department has no records in its possession regarding the August 24, 2005 arrest of Benjamin Jacobson other than digital records which show that he was arrested by Lake

County Police Officer G. Pilipovich on a bench warrant issued by the Lake Circuit Court. He indicated that he would provide the records by faxing hard copies of the digital records to you.

## 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, 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). 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.

Mr. Kopack does not dispute that the Sheriff failed to respond to your request prior to the filing of your complaint on October 14, 2005. The Sheriff violated the Access to Public Records Act by failing to respond to your request within seven days of receipt of the request.

Additionally, Mr. Kopack indicated that the Sheriff does not maintain any records other than the digital records which show that Mr. Jacobsen was arrested by the Lake County Sheriff’s Department on August 24, 2005. He has indicated that the Sheriff will provide copies of the records that it maintains. The Sheriff is required to provide digital records. A “public record” is any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. IC 5-14-3-2(m).

I note that the Sheriff is required to make available certain records regarding arrests. 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.

If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person’s name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
  - (A) time and location of the arrest or the issuance of the summons;
  - (B) investigating or arresting officer (other than an undercover officer or agent); and
  - (C) investigating or arresting law enforcement agency.

IC 5-14-3-5(a). The Sheriff must make this information available to you, whether in paper or digital form.

#### CONCLUSION

For the foregoing reasons, I find that the Lake County Sheriff violated the Access to Public Records Act by failing to respond to your request for records within seven days of receipt of the request.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John M. Kopack