

June 7, 2005

Marc Stults
DOC #891999
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 05-FC-90; Alleged Violation of the Access to Public Records Act by the Middletown Police Department.

Dear Mr. Stults:

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

BACKGROUND

On May 9, 2005 you filed a complaint with this office alleging that the Department had not responded to your request for public records. That complaint was assigned formal complaint number 05-FC-90.

Your complaint states that you submitted a written request for public records to the Department on April 11, 2005. You stated that as of May 5, 2005 you had not received a response from the agency.

I forwarded a copy of your complaint to the Department. Chief Daniel A. Keesling responded on behalf of the Department by letter dated May 10, 2005. A copy of that letter is enclosed for your reference. Chief Keesling indicated that he did not receive your records request. He also indicated that, upon receiving a copy of the request as part of the complaint, he searched for any records responsive to your request. Chief Keesling stated that he doesn’t have any records related to your name, or any relevant to the time, date, and place stated in your request.

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). If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The Department is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours. IC 5-14-3-3(a).

Under the APRA the Department is required to respond to your request for records within seven (7) days of receipt of your request. If the Department had received your request and failed to respond within seven (7) days of receipt, then a violation of APRA would have occurred. In this instance the Department denied having received your request for records. If the Department did not receive the request, its obligation to respond within seven (7) days was not triggered and no APRA violation occurred.

CONCLUSION

For the foregoing reasons, I find that if the Middletown Police Department did not receive your request for records it did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Daniel A. Keesling