

June 7, 2005

Herbert Foust
Reg. No. 124101
Putnamville Correctional Facility
1946 W. U.S. Hwy. #40
Greencastle, IN 46135

Re: Formal Complaint 05-FC-92; Alleged Violation of the Access to Public Records Act by the Hamilton County Sheriff's Department.

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Hamilton County Sheriff's 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 formal 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-92.

You alleged that on April 12, 2005 you filed a written request for public records with the Department. You stated that as of May 2, 2005 the Department had not responded to your request.

I forwarded a copy of your complaint to the Department. Mr. Timothy Garner responded on behalf of the Department by letter dated May 12, 2005. A copy of that letter is enclosed for your reference. It appears, from that letter, that Mr. Garner performed a diligent search in determining whether the Department had received your request. He states:

"I discussed the situation with those responsible for incoming mail, those persons in our records, jail and administrative sections who could have possibly received such a request, as well as the Sheriff and Chief Deputy,

and Division Commanders. None of these persons had record or recollection of this request.

Had the request been mailed, the normal course would be to forward the request to me. I would be responsible for a response. I have no record or recollection of this public records request.”

He also stated that, based upon the information in the complaint, he has prepared a response for you. He said that should such a public records request be made, he will forward the information.

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, then 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 Hamilton County Sheriff’s 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: Timothy Garner