

October 21, 2005

Chester Wilms
D.O.C. #943-594
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Consolidated Formal Complaints 05-FC-194; 05-FC-210; 05-FC-216; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Mr. Wilms:

This is in response to your formal complaints alleging that the Fort Wayne Police Department (“Department”) violated the Access to Public Records Act (“APRA”) by failing to give you records that you have requested. I am consolidating the three complaints into this advisory opinion. I find that the Department did not violate the APRA by failing to give you the records, but in one case was tardy in responding to your request.

BACKGROUND

You have filed three complaints against the Department. In the complaint assigned number 05-FC-194, you complain that the Department has not provided you with a copy of a tape. In the other two complaints, assigned numbers 05-FC-210 and 05-FC-216, you appear to have complained about identical circumstances. You allege that the Department has failed to provide to you copies of a record that you describe as “a backup supplementary report” regarding a police officer’s statement that a confidential informant entered your home. I will refer to this record as “the Report.”

I sent copies of each complaint to the Department, and the Department responded to each complaint. Ms. Carol Taylor, Associate City Attorney stated that with respect to the tape, you were already given that record, and the Department is under no obligation to furnish you with multiple copies of the tape. She also stated that your October 3, 2005 request for the Report had

been received by the Mayor's office on October 5, and forwarded to the Law Department on October 10, 2005. Hence, the response to your request was delayed. Ms. Taylor provided me with copies of her response to your request, indicating that there are no documents responsive to your request. Captain L.M. Wetmore responded to 05-FC-216. He stated that any responsive documents with respect to the case involving the confidential informant have already been provided to you; no additional documents exist.

ANALYSIS

Any person may inspect and copy the public records of any 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). A public agency that receives a request via U.S. Mail is required to issue a response to the request within seven (7) days of its receipt, or the request is deemed denied. IC 5-14-3-9(b). Indiana Code 5-14-3-8(e) states that a public agency must provide "at least one (1) copy" of the public record to the person.

Although under Indiana Code section 5-14-3-8(e), a public agency must provide at least one copy of a public record to a person, there is no requirement that a public agency provide multiple copies to the same person. According to the Department, you have already been provided a copy of the tape that you continue to request. You apparently sent the tape to the Court in furtherance of your appeal. Nevertheless, the Department is not obligated to provide multiple copies of a public record to you so long as one copy has been provided. Accordingly, it is my opinion that since you have already obtained from the Department a copy of the tape, the Department's decision not to provide additional copies to you was not a denial under the APRA. *See Opinion of the Public Access Counselor 01-FC-07.*

The Department also states that your continued requests for the Report have been satisfied because it has provided to you any and all records concerning the case about which the Report pertains. With respect to the October 3 requests, the Department acknowledges that it did not timely respond because of the slow internal routing of the request. This was a violation of the Access to Public Records Act.

I have searched the APRA for any provision that would absolve the Department of the obligation to continue to respond to your duplicative requests for records, but have found none. With its continued efforts to respond to your duplicative requests, the Department has met the letter of the law, but has more than fulfilled the spirit of the law. I suggest that if you believe that the Department has not met the requirements of the law, a judicial remedy appears to be your only practical recourse. *See IC 5-14-3-9(e).*

CONCLUSION

The Department did not issue a timely response to your October 3 request for records, which was a violation of IC 5-14-3-9(b). However, the Fort Wayne Police Department has not otherwise violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Carol Taylor
Capt. L.M. Wetmore