



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

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February 24, 2006

### VIA FACSIMILE

John Emry  
62 W. Jefferson Street  
Franklin, IN 46131-2311

*Re: Formal Complaint 06-FC-25; Alleged Violation of the Access to Public Records Act by the Henry County Sheriff*

Dear Mr. Emery:

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

### BACKGROUND

On January 25, 2006 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint number 06-FC-25. In your complaint you stated that you filed a request for public records on January 10, 2006. You allege that as of January 25, 2006 you had not received any response to your request.

Sheriff Kim L. Cronk responded to your formal complaint by letter dated February 16, 2006. A copy of that letter is enclosed for your reference. Sheriff Cronk stated that he received your request on January 10, 2006. He stated that he responded by calling your office on January 12, 2006 to seek clarification of your request. He spoke with a female employee in your office. She provided clarification of the request. Sheriff Cronk advised her that the record of that particular incident would be the New Castle Ambulance report. He told her that he would forward any information concerning the Henry County Jail and Sheriff's Department. He also advised her that Mr. Dishman was not arrested; therefore, there were no jail reports. Sheriff Cronk forwarded copies of the records to you on February 12, 2006. He also notified the New Castle Police and Ambulance Services of your request and included the New Castle Police and Ambulance report for your review.

### 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-  
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3-3(a). A public agency may not deny or interfere with the exercise of the right stated in subsection (a). IC 5-14-3-3(b). If a public agency receives a request for records that is delivered in person, the agency must respond within twenty-four (24) hours. IC 5-14-3-9(a). If a public agency receives a request for records via 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 the required time, the request is deemed denied. An agency may deny a written request for records if the denial is in writing. IC 5-14-3-9(c). The written denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). If the public agency does not maintain the record, it should inform the requester, but otherwise, the public agency is under no obligation to secure the record from another office that is not under the jurisdiction of the public agency.

You do not indicate how your request was delivered to the Sheriff. If your request was delivered by mail, e-mail or facsimile the Sheriff was required to respond within seven days of receipt of your request. If you hand-delivered your request the Sheriff would have been required to respond within 24 hours of receipt of your request. The Sheriff responded two days after receiving your request.

Sheriff Cronk responded to your request on January 12, 2006 by calling your office to seek clarification of your request and to advise you that he would provide those records concerning the Henry County Jail and Sheriff's Department. He advised your employee that the record regarding the specified incident was a New Castle Ambulance report. He also informed her that Mr. Dishman was not arrested and that there were no jail reports.

The Sheriff's response was not a denial of your written request; therefore, he was not required to provide a written response. This office has often advised agencies to inform a requestor when the agency does not maintain a record. It is not a denial of access when an agency does not provide a record that it does not maintain. There is no requirement in the APRA that the agency state in writing that the agency does not maintain the record.

On February 12, 2006 the Sheriff provided you with the records maintained by the Henry County Jail and Sheriff's Department. Additionally, although not required to produce records of other public agencies, the Sheriff did obtain and provide to you the New Castle Police and Ambulance Services report.

Although the APRA does not provide a specific time-frame for when records must be produced, this office has often advised that records must be produced within a reasonable period of time after the request is received. Many factors may determine the reasonableness of the agency's production of the records, including how many records are requested, whether the records are dated and therefore stored off-site, and whether legal counsel must evaluate the records for confidential or nondisclosable portions. I have no information from the Sheriff regarding why it took over one month to provide the records for a single incident, but this appears to be a rather lengthy production time.

## CONCLUSION

For the foregoing reasons, I find that if the Henry County Sheriff received the request in person, the response was not timely. I also find that the Sheriff did not produce the records within a reasonable period of time.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Sheriff Kim L. Cronk