

June 5, 2006

Paul E. Bryant
4306 Canton Road
Salem, IN 47167

Re: Formal Complaint 06-FC-78; Alleged Violation of the Access to Public Records Act by the Washington County Sheriff's Department

Dear Mr. Bryant:

This is in response to your formal complaint alleging that the Washington County Sheriff's Department ("Department") violated the Access to Public Records Act by failing to respond to your requests for records.

BACKGROUND

You filed your formal complaint with the Office of the Public Access Counselor on May 4, 2006. You allege that you hand-delivered to the Department a written request for access to records. You stated you also "served notice of trespass to the Department April 12, 2006, asking the Sheriff to notice persons of trespass." You allege that Brent Miller stated he could not accept your request for records. You enclosed the "Request for Trespass Notice" and a copy of your request for records. You requested:

"Any and all records, documents, faxmail, email, or phone complaints having to do with Paul E. Bryant or any member of his family living at 4306 Canton Road Salem IN 47167 from the dates of May 2003 to May 4, 2006, and not limited to these dates but also any and all complaints made pertaining to the name of Voyles, Woosley, Canton United Methodist Church, or their trustees."

The written request that you sent is silent with respect to any record regarding the Request for Trespass Notice.

I sent a copy of your complaint to the Department. I received a written response from A. Howard Williams, Legal Deputy to the Department. I have enclosed a copy of his response. According to Mr. Williams, the Department found your request virtually impossible to respond to. Hence, Sheriff Roger Lyles attempted to contact you by telephone each duty day after the request was received, but no one answered the telephone. You never returned to the Department to inquire about your request. The Department stands ready to comply, but will need to determine with more specificity what records you are seeking.

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 Access to Public Records Act. Ind. Code 5-14-3-3(a). A request for a record must identify the record requested with reasonable particularity. IC 5-14-3-3(a)(1). A public agency that receives a request for a record via hand-delivery must respond within 24 hours of receiving the request, or the request is deemed denied. IC 5-14-3-9(a). A denial of a written request for a record must be in writing and state the exemption or exemptions that authorize the agency to withhold the record. IC 5-14-3-9(c).

First, I note that you requested priority status for your complaint. If priority status may be granted for a complaint, the advisory opinion must be issued within seven days. IC 5-14-5-10. However, you have alleged none of the circumstances for which priority status may be granted. 62 Ind. Admin. Code 1-1-3. Therefore, I am issuing the advisory opinion within 30 days. IC 5-14-5-9.

Because you delivered your request for records in person to the Department, the Department was required to respond to your request within 24 hours. You claim that the Department immediately indicated that it could not accept your request for public records. However, the Department avers that it attempted to reach you by telephone to ascertain with more specificity the records you requested. I cannot resolve this factual dispute, but the Department appears willing to comply.

Your request is rather broad, and although you specify dates, for example, you also state that the request is not limited to those dates. I agree that your request is not stated with reasonable particularity. Where a requester has not identified the record requested with reasonable particularity, the agency is required to engage the requester in a discussion regarding how the request can be narrowed or clarified. By its response, the Department claims to have attempted to reach you to clarify your request, to no avail. I recommend that you call the Department and explain with more specificity your request.

You also claim that you served notice of trespass to the Department, and that you are "asking the Sheriff to notice persons of trespass." It is not clear that you are seeking any record but rather are asking the Sheriff to enforce a law. Whether the Sheriff takes some action on your Request for Notice of Trespass is not within the purview of the Access to Public Records Act. To the extent that you seek documentation showing that the Sheriff served the Notice of Trespass, and the Sheriff maintains such a record, the Department is required to disclose it.

However, I see no evidence that you actually requested any such record. I recommend that you send the Department your request for this record. The Department should tell you if it has no record that is responsive to this request.

CONCLUSION

For the foregoing reasons, I find that the Washington County Sheriff's Department did not violate the Access to Public Records Act. When you contact the Department to explain with more specificity the records you are requesting, the Department should allow inspection and copying of any records that you identify with reasonable particularity, or tell you whether the records are maintained by the Department.

Sincerely,

Karen Davis
Public Access Counselor

cc: A. Howard Williams