

June 16, 2006

John Emry
62 W. Jefferson Street
Franklin, IN 46131

Re: Formal Complaint 06-FC-92; Alleged Violation of the Access to Public Records Act by the Johnson County Sheriff's Department

Dear Mr. Emry:

This is in response to your formal complaint alleging that the Johnson County Sheriff's Department ("Department") violated the Access to Public Records Act by failing to respond timely to your request for a record and for charging an excessive copy fee for a videotape. I find that the Department violated the Access to Public Records Act.

BACKGROUND

You state that you requested certain records of the Department concerning Robert McTarsney on May 17, 2006. You do not state how you requested the records, but I assume for purposes of this opinion that you mailed your request on May 17, 2006. You allege that you have not received any response as of the date you filed your complaint, May 30. You also state that Mr. McTarsney was told that a copy of the videotape would be \$50.

I sent a copy of your complaint to the Department. Mr. A. Howard Williams responded on behalf of the Department. Mr. Williams acknowledged that the response, issued on May 31, was late. This was due to the Memorial Day holiday. All responsive records that could legally be provided will be provided, with the exception of the videotape, which will be provided only upon payment of the fee.

The May 31 response of the Department stated:

- The cost for a copy of video recordings is \$50, which fee has been approved by the State Board of Accounts;

- The medical information on jail inmates is maintained by the Johnson Memorial Hospital who renders the medical care;
- Copies of financial records are attached; the cost of copying these records is \$.50 per page;
- Inmate records, called “remands,” for the past three years are attached; the copy fee is \$.50 per page;
- All jail logs concerning Robert McTarsney must be acquired through a subpoena duces tecum.

You supplemented your complaint with a letter stating your disagreement with the belated response of the Department. In particular, you contend that the Johnson County Ordinance passed regarding copy costs limits the copy fees to \$.10 per page. You doubt that the ordinance covers copy costs for videotapes. If the Department is in possession of medical records, it should provide them, although you acknowledge that the records in a hospital might not be covered by the Access to Public Records Act. You contend that the denial to jail logs is not supported by any citation to authority. Finally, you sent on June 1 a letter to the Department challenging the fee for the videotape and asking that you be allowed the right to inspect the videotape.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). If a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny a written request for a record if the denial states the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

A public record is any material that is “created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m). A public agency may charge a copy fee that meets the requirements of the APRA. The public agency may not charge a fee to inspect a public record, or to search for, examine, or review a record to determine whether the record may be disclosed. IC 5-14-3-8(b). In addition, the public agency may not charge for labor costs or overhead costs in a copying fee. IC 5-14-3-8(d). For a public agency that is not a state agency, the fiscal body of the public agency shall establish a fee schedule for the copying of documents. The fee established may not exceed the actual cost of copying. For copies of documents, “actual cost” is the cost of the paper and the per-page cost for use of the copying equipment. The public agency may require that the copying fee be paid in advance. IC 5-14-3-8(e).

The Department has acknowledged that it did not provide a timely response to your request, because the response was sent more than seven days after the Department received the

request. It is my opinion that the response of May 31 was not timely under the APRA. It is also my opinion that the copy fee of \$.50 per page exceeds the actual cost of copying for documents.

The Department has not stated why it is charging \$50 for a copy of the videotape. This fee appears to exceed the actual cost of copying the tape, which should include the cost of the blank tape to the Department. The Department may not charge a fee that includes labor or overhead costs. In addition, the Department should permit you to inspect the tape without charge.

The medical records maintained by the Johnson Memorial Hospital do not appear to me to be “created, received, retained, maintained, or filed by or with” the Department. The mere fact that the Department, in its capacity as custodian of an inmate, may have authorization to access a medical record of an inmate does not, in my opinion, make those records public records of the Department. Therefore, it was not a denial of access to state that the records belong to Johnson Memorial Hospital.

Finally, the statement that you must obtain a subpoena duces tecum to access the jail logs was a denial of access in violation of the APRA. A record that is otherwise disclosable under the APRA may be obtained without a subpoena, whether or not the requester is involved in litigation. Any person may inspect and copy public records under the APRA, even if the records may be obtained through use of discovery. Information relating to a person received in a jail or lock-up is required to be disclosed under IC 5-14-3-5(b). The denial of the jail logs is a continuing violation of the Access to Public Records Act that is actionable under IC 5-14-3-9(e).

I also write to say that Mr. Williams has stated that he is available to assist you when you request records from a Sheriff’s Department. This is an admirable gesture, and I encourage you to accept his offer of assistance. However, I must also point out that the Department should consult with Mr. Williams when in doubt about its responsibilities under the APRA.

CONCLUSION

For the foregoing reasons, I find that the Johnson County Sheriff’s Department violated the Access to Public Records Act when it charged an excessive fee for copies of documents and a videotape. In addition, the Department denied you the jail logs in violation of the APRA.

Sincerely,

Karen Davis
Public Access Counselor

cc: A. Howard Williams