

July 31, 2007

Larry Kuhn
#894858
Pendleton Correctional Facility
PO Box 30
Pendleton, Indiana

Re: Formal Complaint 07-FC-190; Alleged Violation of the Access to Public Records Act by the Delaware County Jail

Dear Mr. Kuhn:

This is in response to your formal complaint alleging the Delaware County Sheriff's Office, Jail Division ("Jail") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying your request for records. A copy of the Jail's response to your complaint is enclosed for your reference. I find that the Jail violated the Access to Public Records Act.

BACKGROUND

In your complaint you allege you submitted a request for access to public records to the Jail on June 12, 2007 for visitation dates in March 2002 between you and attorney Steven J. Bruce. You filed your complaint on June 25, and I received it on July 2, alleging you had received no response from the Jail.

Lt. Arlon Johnson, Jail Commander, responded to your complaint on July 9. In his response, Lt. Johnson included a copy of his response to your request written June 15. In the response to your request, he asked you to identify with reasonable particularity the record you were requesting, indicating you had listed several logs in your request. Lt. Johnson also included a copy of IC 5-14-3-8 and indicated that pursuant to it you would be responsible for copy fees at a rate of \$.10 per page. He further asked you to provide a date range for your request. He indicated the Jail would search for the records and advise you of the number of pages.

In his response to your complaint, Lt. Johnson reiterated his belief that your request was not made with reasonable particularity. He further indicated his belief it is not appropriate for any

of his employees to search for records while on the in the presence of the requester so as to eliminate the possibility of supplying the wrong documents.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code 5-14-3-1. The Jail 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 Jail during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

A request for inspection and copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. IC 5-14-3-3(a).

A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies . . .

IC 5-14-3-3(b).

A public agency may not charge a fee to search for, examine, or review a record to determine whether the record may be disclosed. IC 5-14-3-8(b). The fiscal body, or governing body if there is no fiscal body, of a public agency shall establish a fee schedule for the certification or copying of documents. The fee for copying documents may not exceed the greater of ten cents per page for non-color copies or the actual cost to the agency of copying the document. IC 5-14-3-8(d)

If a person is entitled to a copy of a public record under this chapter and the public agency has reasonable access to a machine capable of reproducing the public record, the agency must provide at least one copy. A public agency may require that the payment for copying costs be made in advance. IC 5-14-3-8(e).

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

In this case, the Jail has claimed your request was not made with reasonable particularity as required under IC 5-14-3-3(a). "Reasonable particularity" is not defined in the APRA. "When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App.

1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

You have requested visitation dates between attorney Steven J. Bruce . . . and you during March 2002 that took place at the county jail related to Cause No 18C02-0111-CF-78. You go on to list the various records you think might be kept containing this information. While Lt. Johnson has asked you to narrow your request by date, it is my opinion that by asking for only records pertaining to March 2002 you have already narrowed the request by date. It is my understanding from reading your request that perhaps you do not know the exact name of the record you are seeking but are instead providing some guidance to the Jail in understanding you seek the requested information in whatever form it is kept and available. You specify that you are seeking only information from any of those sources pertaining to visit dates between you and Mr. Bruce.

The APRA does not require the requester to list the name of the specific document you request. A requester might not know the name given to every document a public agency maintains. The APRA requires “reasonable particularity” so as to direct the agency to the particular information you are requesting. I find that your request was reasonably particular under the APRA. Nothing in the APRA, though, requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If the Jail does not maintain any record listing visitation dates, the Jail should respond to your request by indicating it does not have any records responsive to your request.

Mr. Johnson has indicated he does not feel it is appropriate for any of the employees to search for records while not in the presence of the requester. To the contrary, it is appropriate and required by IC 5-14-3-8(b) and (e) that the Jail shall search for the record you requested and to provide a copy to you, so long as the Jail has access to a copy machines. Mr. Johnson has indicated the Jail may charge you a copy fee of up to \$.10 per page for the records you request. This is correct, and the Jail may collect the fee in advance of sending you the copies. However, the Jail should not expect you to have already sent payment for the copies since you do not yet know the number of pages responsive to your request. The Jail should let you know the number of pages of records responsive to your request and the total copy fee so you may remit such to the Jail. Upon receipt of payment, the Jail should then send you the requested copies.

In your complaint you allege the Jail did not respond to your request for access to records. The Jail provided a copy of a letter to you dated June 15. The Jail is required by IC 5-14-3-9(b) to respond to your request within seven days of receipt of the request. Since your request was dated June 12, I am assuming the Jail received it some time between June 12 and 15, so the Jail’s response was issued within the period allowed by the APRA. While the response was timely, the Jail should not have denied your request unless it does not have any records of visitation dates between you and Mr. Bruce during the month of March 2002.

CONCLUSION

For the foregoing reasons, I find that the Delaware County Sheriff's Office, Jail Division violated the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Lt. Arlon Johnson, Delaware County Sheriff's Office Jail Commander