

August 1, 2007

Herbert Foust  
DOC #999091  
PO Box 900  
Bunker Hill, Indiana 46914

*Re: Formal Complaint 07-FC-198; Alleged Violation of the Access to Public Records Act by the Goshen Police Department*

Dear Mr. Foust:

This is in response to your formal complaint alleging the Goshen Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by not responding to your request for records. I find that the Department violated the APRA.

#### BACKGROUND

In your complaint you allege that in May 2007 you requested from the Department access to reports maintained by the Department. You received an undated response from Assistant Chief Kyle Priem of the Department on June 20, indicating the reports are available by court order. I received your complaint on July 2.

The Department did not respond to your complaint.

#### 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 Department 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 Department 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 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). When a request is made in writing, a public agency may deny the request if the denial is in writing and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and title of the person responsible for the denial. IC 5-14-3-9(c)

I do not have any evidence when the Department received your request. You have indicated you submitted the request in May. Even if you sent the request at the end of May and even though mail through the prison system can be slow, I believe the Department should have received the request at the latest by the end of the first week of June. You did not receive the response until June 20. Since the response was undated, we do not know when it was sent. I find it likely, though, when considering the dates, that it was not sent within seven days of receipt of the request. If this is true, the response is untimely under the APRA.

The Department in its response indicates the reports you request are available by court order. While it is possible the documents you request may be excepted from disclosure under the APRA, the Department has the duty under IC 5-14-3-9(c) to provide the specific statutory exemption in its denial.

#### CONCLUSION

For the foregoing reasons, I find that the Goshen Police Department violated the Access to Public Records Act.

Best regards,

Heather Willis Neal  
Public Access Counselor

cc: Kyle Priem, Goshen Police Department