

September 5, 2007

Ulysses Moye
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-239; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Sheriff's Department

Dear Mr. Moye:

This is in response to your formal complaint alleging the Vanderburgh County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. A copy of the Department's response is enclosed for your reference. I find that while the Department's response may have been untimely, it did not otherwise violate the APRA.

BACKGROUND

In your complaint you do not describe your allegation related to denial of access to records, but I gather from the documents you submitted that your complaint is either that you did not receive records pursuant to your request dated July 9 or that you believe you should not have been charged for the copies.

The Department responded to your complaint on August 10, indicating the medical records had been copied and were in the mail to you. No further information was provided.

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. I.C. §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. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

If the issue you present here is that you did not receive a response to your request, I have no evidence indicating whether the Department initially responded to your request. The Department did indicate on August 10 that the copies had been sent to you. If the Department did not respond to your request within seven days of receipt of the request, the response was untimely under the APRA.

To the extent your complaint regards the fees associated with the copies you requested, the APRA provides that public agencies may charge a copying fee. In most cases, local public agencies may only charge the actual cost, which means the cost of the paper and the per-page cost for the machine. I.C. §5-14-3-8(d). Public agencies may also request payment in advance for copies. I.C. §5-14-3-8(e). There are instances, however, when the General Assembly has provided separate statutory authority for local officials to charge a copying fee different from the actual cost. I.C. §5-14-3-8(f).

By enclosing copy of an affidavit of indigence, I understand you claim to be entitled to at least one copy of a public record at no charge. There is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there are instances when a court will issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your request to the Department, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge.

It is my understanding the Department has provided you with copies of the records you requested.

CONCLUSION

For the foregoing reasons, I find that while the Department's response may have been untimely, it did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Major Dave Wedding