

October 10, 2007

Marlan Bonds
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-271; Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department

Dear Mr. Bonds:

This is in response to your formal complaint alleging the Elkhart 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 the Department did not violate the APRA.

BACKGROUND

You allege that you submitted a request to the Department on August 22, 2007 for records indicating any persons who visited you during your detention between October 2003 and October 2004. Alleging the Department did not respond to your request, you filed this complaint postmarked September 5 and received by this office on September 10. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to your complaint by letter dated September 10. The Department contends that while you dated your request August 22, the postmark date from the Indiana State Prison was September 5. The Department received the request on September 6 and responded with the records you requested on September 7.

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).

Here the Department received your request on September 6 and responded with the records you requested on September 7, well within the time allowed for response in the APRA. I.C. §5-14-3-9(b). The Department did not violate the APRA by responding to your request within seven days of receipt of the request.

Regarding timing for filing of your complaint, the public agency has seven days from the date of receipt of your complaint to respond. I.C. §5-14-3-9(b). Because of the length of time it takes mail to travel through the prison mail system, you should allow at least three days (excluding weekends and holidays) for delivery time on each end of the request. So for this request, for example, you indicated you submitted your request on August 22. Adding the seven days allowed for response and three days on each end for traveling through the prison mail system and excluding weekends and holidays, you should anticipate having received the response about September 11. I urge you to consider this timeline when submitting formal complaints to this office in the future.

CONCLUSION

For the foregoing reasons, I find that the Department did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Trevor Wendzonka, Elkhart County Sheriff's Department