

October 30, 2007

Herbert Foust  
DOC #999091  
PO Box 900  
Pendleton, Indiana 46914

*Re: Formal Complaint 07-FC-303; Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department*

Dear Mr. Foust:

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. It is my opinion the Department did not violate the APRA by not responding to a request it did not receive and further did not violate the APRA by responding to your subsequent request within seven days.

#### BACKGROUND

You allege that you submitted a request to the Department dated September 11, 2007 and one dated September 15, 2007. You allege you requested on September 11 records involving an individual named Joseph Adam Lee. You allege on September 15 you requested records related to four other individuals. You indicate that the Department responded to your September 15 request but provided records different from those you sought with your request. You further allege you did not receive a response to your request dated September 15. You mailed your complaint to this office on September 25, and I received it on October 2.

The Department responded to your complaint by letter dated October 3. The Department contends it has no record of having received your request dated September 11. Instead, the Department received two similar requests for records related to a November 1999 burglary case, and the Department responded to both requests as required by the APRA. Regarding the other request, the Department indicates it received and responded to the request received September 17 with no problems. Regarding the request received on September 19, the request required additional research because of the age of the case. The response and production of materials were mailed to you on September 24 and September 25, respectively.

## 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).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here the Department indicates it did not receive your September 11 request for records of Mr. Lee. You indicate you believe the Department misinterpreted your request and sent you records different from those you requested. If you believed that to be the case, the appropriate next step would have been to clarify your request with the Department. The Department did not deny your request by misunderstanding the records you sought. I am still unclear whether the Department received your request regarding Mr. Lee or if you inadvertently mailed two requests regarding the latter issue instead of one regarding Mr. Lee and one regarding the latter burglary issue. If the Department did receive your request, it would have a duty under the APRA to respond within seven days of receipt even if the records requested are not maintained by the Department. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Department did not receive your request, it did not violate the APRA by not responding.

Regarding the September 15 request, the Department indicated it received two requests from you, one on September 17 and one on September 19. It is my understanding the Department responded immediately to the request received September 17 or at least well within the seven days required by the APRA. I.C. §5-14-3-9(b). Regarding the request received on September 19, the Department needed extra time to research the records but still mailed its response and production of the records within the seven days allowed in the APRA. I.C. §5-14-3-9(b).

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 should expect that if you submitted your request on September 15, it would have reached the agency on or about September 19. The agency would have had until September 26 to respond, and you should anticipate having received the response about October 1. To further support this, I point to the date you mailed your complaint to this office, September 25. We did not receive it until October 2. I urge you to consider this timeline when submitting formal complaints to this office in the future.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Trevor Wendzonka, Public Information Supervisor, Elkhart County Sheriff's Department