

February 7, 2003

Mr. Chester L. Wilms
#943594 E-210
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: *Advisory Opinion 03-FC-4*; Alleged Denial of Access to Public Records by the Fort Wayne Police Department.

Dear Mr. Wilms:

This is in response to your formal complaint, which was received on January 21, 2003. You have alleged that the Fort Wayne Police Department ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that the Department failed to produce to you a file-stamped copy of a probable cause affidavit used to obtain a search warrant and the search warrant in a criminal case. Sergeant Andrew Bubb of the Department responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not deny you access in violation of the APRA with respect to your public records request.

BACKGROUND

According to your complaint, you requested ¹ from the Department a copy of the file-stamped affidavit of probable cause used to obtain a search warrant and the search warrant itself in a criminal matter, the court cause number being 02D04-9312-CF-980A. You received a response from Sergeant Bubb dated January 14, 2003 informing you that there was nothing that the Department could do to assist you and that the "documents that you refer[red] to in your request were provided to your counsel, and subjected to the scrutiny of the court." You then filed your formal complaint with this Office alleging denial of access to public records under the APRA.

In response to your complaint, Sergeant Bubb stated that the Department does not possess a file-stamped copy of the affidavit used to obtain a search warrant in the particular case you cited. He further stated that such a document would have been retained by the Allen Superior Court, not the Department.
² As to the search warrant itself, Sergeant Bubb confirmed by telephone that the Department no longer

has a copy of this public record, but suggested that the Court or the Prosecuting Attorney's Office may. For these reasons, it is the Department's position that they have not denied you access in violation of the APRA because they do not have the documents you have requested.

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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 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 Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

The Department was required to provide a response to your public records request under Indiana Code section 5-14-3-9(b) and that response was provided to you. Public agencies must advise a requestor as to whether the public records sought will be provided, if access is being denied and the statutory basis for that denial or if the public agency does not have the records requested. If the public agency denies access to public records, the requestor may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you requested from the Department a copy of the file-stamped probable cause affidavit and the search warrant in a case in which you were the defendant. The Department did respond but the response did not clearly state that the Department no longer had these documents, only that they could not assist you. The January 14th response did not address the specific records you requested and it is always my advice that a public agency should directly address the items requested. In this case, however, I understand that you have made several requests in the past for the very same documents, so the Department's response may have been based upon the fact that they had communicated this to you in the past. The fact is that the Department no longer has the public records you have requested, so the failure to provide them to you is not a denial under the APRA. For these reasons, it is my opinion that the Department did not deny you access in violation of the APRA.

On a final note, it is my opinion that public agencies are required under the APRA to respond to public records requests and advise the requestors concerning the disclosure or nondisclosure of the specific public records sought. I recommend that in the future, the Department make sure that responses to public records requests in fact clearly address the records being requested so that there is no confusion.

CONCLUSION

It is my opinion that the Fort Wayne Police Department did not deny you access in violation of the APRA with respect to your public records request because the records you requested are not maintained by the Department.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Sgt. Andrew Bubb, FWPD

¹ You did not provide any information on when you sent this request or the date of the request.

² Sergeant Bubb also referenced an order of the Allen Superior Court barring you from filing any motions or requests related to the case in question and another court case in which you were the defendant. This is a matter for you to pursue with the Court, as I have advised you in a recent informal inquiry response.