

July 15, 2003

Mr. Robert Beatty, 884923
Location 33-1J
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-46*: Alleged Denial of Access to Public Records by the Starke County Sheriff's Department.

Dear Mr. Beatty:

This is in response to your formal complaint, which was received on June 16, 2003. You have alleged that the Starke County Sheriff's 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 all records relating to your arrest on September 4, 1987. Mr. Robert A. Sims, Starke County Sheriff, 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 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 from the Department a copy of all records regarding your September 4, 1987 arrest. When you did not receive a response to your request within seven (7) days of mailing your request you filed your complaint with this Office.

In a conversation with Ms. Anne O'Connor, the prior Public Access Counselor, a representative of the Department stated that the Department received your public records request on June 16, 2003 the same day this Office received your formal complaint. In his written response to this Office, the Sheriff advised that the department does not maintain radio logs from 1987, nor does the Department have a police report for the requested incident. The Sheriff also advised that the spelling of your name on all your requests appears to be Beetty as opposed to Beatty. Under the name Beetty there is no arrest card or book-in card; however, under the name Beatty there is an arrest card and book-in card a copy of which I have provided for your convenience. Finally, the Sheriff stated that it appears as though the arrest was made by the Pulaski County Sheriff's Department and advised that additional records requests should be made to that department.

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).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person 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 the information provided to this Office, the Department did not receive your request until June 16, 2003 the same day you filed your complaint. It is my opinion that the Department had seven (7) days from the day it received your request, June 16th, to respond. Therefore, it is my opinion that the Department did not deny you access to public records in violation of the APRA by failing to respond to your request within seven (7) days because the seven (7) days for response had not elapsed at the time you filed your complaint.

It should be noted that the Department responded to this Office on June 16, 2003 indicating that the Department does not maintain radio logs from 1987, nor does it have the police report for the incident. The Department also advised, after learning the correct spelling of your name, that there was an arrest card and book-in card for you. The Department provided a copy of those records to this Office, and I have enclosed a copy for your convenience.

CONCLUSION

It is my opinion that the Starke County Sheriff's Department did not receive your request until the day you filed your formal complaint. Therefore, it is my opinion that the Starke County Sheriff's Department did not violate the Access to Public Records Act by failing to respond to your request within

the seven (7) as is required under the Act.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Enclosures

cc: The Honorable Robert A. Sims,
Starke County Sheriff