

August 20, 2004

Mr. Ronald L. Stewart
62 West Jefferson Street
Franklin, IN 46131-2311

*Re: Advisory Opinion 04-FC-119; Alleged Violation of the Access to Public Records Act
by the Montgomery County Sheriff's Office*

Dear Mr. Stewart:

This is in response to your formal complaint alleging that the Montgomery County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), I.C. §5-14-3, by failing to respond to your request for records within the time period set by statute. The Sheriff has responded to your complaint, a copy of which is enclosed for your reference. For the reasons set forth below, I find that the Sheriff violated the Access to Public Records Act as alleged in your complaint.

BACKGROUND

Through your attorney, you mailed a written request for records to the Montgomery County Sheriff's Office on June 26, 2004. Specifically, you requested your medical records from January 1, 2004 until your release from jail as well as a copy of the Montgomery County Jail policies and procedures with respect to medications and medical treatment for prisoners from intake until their release from jail. Having not received a response, you submitted a formal complaint to our office on July 21, 2004. We forwarded a copy of your complaint to the Sheriff. Mr. A. Howard Williams, Sheriff's Legal Deputy, responded in writing on behalf of the Sheriff by advising our office that the Sheriff had not responded to your request because your request had been mislaid. The Sheriff's written response to our notice of complaint, which was sent to us on August 4, 2004, also included a copy of a letter to you, dated July 29, 2004, in which they now respond to your written request.

ANALYSIS

The Sheriff is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. I.C. §5-14-3-9(b). A timely response to the request need not include production of the requested documents or expressly decline to produce documents responsive to the request. A public agency may comply with its response obligation under the statute by

acknowledging receipt of the request and indicating the specific actions the agency is taking toward production.

When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. I.C. §5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b).

The Sheriff acknowledges that a response to your records request was not forthcoming within the appropriate time period. The Sheriff states that the reason the response was not forthcoming is that your request had been mislaid and, as a result, had not been directed to the appropriate person within the statutory time frame. Notwithstanding the Sheriff's assertion that the lack of response was merely a mistake, I find the Sheriff in violation of the Access to Public Records Act for failing to respond to your records request within 7 days of their receipt of your letter.

It should be noted that while this office finds a violation of the Access to Public Records Act insofar as the timeliness of the Sheriff's response, this office has received subsequent correspondences, both from you and Mr. Williams, indicating that there are ongoing communications between the two of you in an effort to provide the correct records.

CONCLUSION

For the reasons set forth above, I find that the Montgomery County Sheriff's Department violated the Access to Public Records Act as alleged in your complaint.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. A. Howard Williams; w/out enclosures