

November 15, 2004

Mr. Roger L. Perry  
1660 N. State Road  
Columbus, IN 47203

*Re: Formal Complaint 04-FC-190; Alleged Violation of the Access to Public Records Act by the Bartholomew County Sheriff's Department*

Dear Mr. Perry:

This is in response to your formal complaint alleging that the Bartholomew County Sheriff's Department ("Sheriff") violated the Access to Public Records Act ("APRA") by denying you public records. I find that the Sheriff violated the Access to Public Records Act when he failed to state the basis for denial of the record in accordance with APRA.

#### BACKGROUND

On September 1, 2004, you hand-delivered a request for public records to the Sheriff. Generally stated, you requested a number of types of documents and other records including audio and video recordings relating to your own arrest, transport, booking, holding, incarceration or release on July 29 and July 30, 2004. On that same day, the Sheriff sent you a response informing you that certain records were available for pick-up, informing you that it did not maintain copies of a warrant or court order, that audio communication should be requested from the Emergency Operations/911 Center, and that certain items (police report, UCR's, logbooks, and video) "fall outside the scope of the Public Records Act for a pending/active criminal case and therefore will not be produced."

You filed your formal complaint, which was postmarked on October 1 but received by the Public Access Counselor on October 15, 2004. Because your complaint was postmarked within 30 days of the denial of the record, your complaint is timely. I sent a copy of your complaint to the Sheriff, and I received a response from Peter Campbell King, who is counsel to the Sheriff. I have enclosed a copy of his response for your reference. He basically confirms the Sheriff's response.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency. IC 5-14-3-3(a). The Sheriff is a public agency and is subject to the APRA. IC 5-14-3-2. The Access to Public Records Act requires that an agency respond to a request for records in a certain way when denying a record. IC 5-14-3-9(c) requires that the agency denying all or part of a record state its denial in writing (if the request was in writing) and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public records, and the name and the title or position of the person responsible for the denial.

In the Sheriff's written response of September 1, he specifies that certain records are not maintained by his office, notably copies of the warrant and court order and copies of the 911 audio communication. I am not in a position to express doubt for the sincerity of this assertion, but note that if you believe that the Sheriff actually maintains these records or has an affirmative duty to maintain the records, your recourse would be to file a lawsuit in accordance with IC 5-14-3-9(e).

You challenge the remainder of his response, specifically the denial of the police report, UCR's (uniform crime report), logbooks, and video relating to your detention. Some of these records appear to fall within IC 5-14-3-5, which requires that certain information relating to an individual's arrest, jail booking, and incident log be maintained by law enforcement and open for inspection and copying. Section 5 information must be disclosed even if the record is an "investigatory record of law enforcement." See IC 5-14-3-4(b)(1) ("*However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter*"). If any of the records denied by the Sheriff are those that are required to be disclosed under IC 5-14-3-5, then the denial was in violation of APRA.

Moreover, the Sheriff's denial does not comport with IC 5-14-3-9(c), because it does not state the specific exemption authorizing the withholding of the records. Upon reading the Sheriff's response that those records "fall outside the scope of the Public Records Act for a pending/active criminal case and therefore will not be produced," I can only guess that the Sheriff is exempting the records as "investigatory records of law enforcement" under IC 5-14-3-4(b)(1), but that is only a guess, since the latter term is not used nor is there a statutory citation. Also, although attorney King confirms my guess, that after-the-fact response cannot augment the insufficient response of the Sheriff.

## CONCLUSION

For the foregoing reasons, I find that the Bartholomew County Sheriff's Department violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Peter Campbell King