

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-47*: Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department.

Dear Mr. Beatty:

This is written in response to your formal complaint, which was received on June 16, 2003. You have alleged that the Elkhart County Sheriff's Department ("Department") violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that on May 7, 2003 you were improperly denied access to public records. Mr. Walter E. Miller, Records Supervisor for the Department, responded in writing to your complaint. A copy of his response is enclosed for your reference.

In his response Mr. Miller stated that he checked the Department's records and discovered that you were arrested by the Nappanee City Police Department. He further indicated that the Department does not receive copies of the Nappanee City Police Department records. Consequently, he advised you in a letter dated May 7, 2003 that you would have to obtain the records you requested from the Nappanee City Police Department.

BACKGROUND

According to your complaint, you were arrested on October 27, 1980. Present at the arrest were members of the Department. You further stated that the Department took custody over you the next day. As a result, you suspected that the Department had records relating to your arrest. Therefore, you made a public records request to the Department seeking copies of all documents related to your arrest including laboratory reports. You received a letter dated May 7, 2003, which stated that you have to obtain the records relating to your arrest from the Nappanee City Police Department. You then filed your formal complaint with this Office.

In response to your formal complaint Mr. Miller stated that the Department does not receive

copies of the City of Nappanee Police Department records. Additionally in his May 7, 2003 letter to you he indicated that you would have to obtain the records you are seeking from the City of Nappanee Police 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).

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 all records from the Department that relate your arrest. The Department did respond but the response did not clearly state that the Department is not in possession of the documents, only that the records would have to come from the Nappanee Police Department. The May 7, 2003 response should have indicated that the Department did not have the records you requested in its possession. Regardless, the fact is that the Department does not have the public records you have requested, so the failure to provide them to you is not a denial under the APRA. For this reason, it is my opinion that the Department did not deny you access to public records 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. For example, under the facts presented the Department should have advised you that it was not in possession of the records you requested and that you should make your request to the Nappanee Police Department.

CONCLUSION

It is my opinion that the Elkhart County Sheriff's 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,

Sandra K. Barger
Acting Public Access Counselor

cc: Mr. Walter Miller, Records Supervisor
Elkhart County Sheriff's Department