

December 13, 2004

Mr. Kedrice A. Dorsey
P.O. Box 41
Michigan City, Indiana 46361

Re: Consolidated Formal Complaint 04-FC-215, 04-FC 216; Alleged Violation of the Access to Public Records Act by the LaPorte County Prosecutor's Office and the Michigan City Police Department

Dear Mr. Dorsey:

This is in response to your formal complaints alleging that the LaPorte County Prosecutor's Office ("Prosecutor") (04-FC-216) and the Michigan City Police Department ("Department") (04-FC-215) violated the Access to Public Records Act by failing to respond to your requests for records. The Department has responded to your complaint in writing, and a copy of the written response is attached for your reference. Because the requests seek the same document from both public agencies within LaPorte County, I have consolidated these matters for opinion. I find that the agencies have not violated the Access to Public Records Act.

BACKGROUND

You allege that on October 18, 2004, you sent separate requests to the Prosecutor and the Department for the same item: "a copy by tape or transcripts of such call to M.C.P.D. to a fight in progress on Sunday, April 27, 2003 and by tape or transcripts a copy of dispatched call to officers to the area of 10th and Oak reference a fight in progress on Sunday, April 27, 2003 at approximately 1828 hours, to case number 46D01-0304-FA-35." You allege that you received no response to your requests. You then filed separate complaints, received by this office on November 12, 2004.

I sent each agency the copy of your complaint. Mr. Ben Neitzel, Chief of Police, responded in writing on behalf of the Department, and I have enclosed his response. The Department had not received your request, but stated that it had made a search of its records of the dispatch call that you sought, and seeks confirmation of the address at which the fight occurred prior to pulling the archived file and transcribing the call for you. This office spoke

with Prosecutor Price by telephone. Prosecutor Price also did not receive your request. He also stated that his office does not maintain the police log information that you seek.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless an exception to disclosure exists for a record. IC 5-14-3-3(a). The LaPorte County Prosecutor's office and the Michigan City Police Department are public agencies subject to the Access to Public Records Act. IC 5-14-3-2.

The record that you request appears to be part of the daily log of suspected crimes, accidents or complaints that are required to be maintained under IC 5-14-3-5(c). Hence, an agency that is required to maintain such a record, such as the Michigan City Police Department, must make it available for inspection and copying. However, the Department states that it did not receive your request for records. Although an agency must respond in writing to a written request for records within seven (7) days after receiving the request by U.S. Mail, it is not a violation of the Access to Public Records Act for an agency to not respond when it has not received the request. You have not been able to demonstrate proper mailing of your request, so I cannot conclude that the Department must have received your request but mislaid it.

In fact, even if the Department had received your request, its duty to respond means that it must acknowledge in writing its receipt of your request and describe how it intends to comply. The timeframe for response may or may not include actual production of the record.

The Department is willing to send you the record if you verify in writing to the Department that the record you are seeking is one for a fight at a different location than you indicated, on the same date and time. This is the only record that fits the description of the call by date, time and nature of the complaint. Requests for records must identify with reasonable particularity the record that a person is seeking. IC 5-14-3-3(a). The Department's efforts to comply by researching its records and seeking confirmation from you of the record you seek are commendable. Also, it has requested a copy fee for the record prior to providing it to you.

With respect to the Prosecutor, its failure to respond was not in violation of the Access to Public Records Act, where it did not receive your correspondence. I note that your request to the Prosecutor appears to have been sent to "Superior Court 1" at the 300 Washington Street address. Perhaps the designation of the Court is responsible for the mail not being received by the Prosecutor. In any event, the Prosecutor does not maintain the record you are seeking.

CONCLUSION

For the foregoing reasons, I find that neither the LaPorte County Prosecutor's Office nor the Michigan City Police Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ben Neitzel
Atley Price