

April 5, 2004

Mr. Marcus D. Richardson, No. 944814
Indiana State Prison
P.O. Box 41
Michigan City, Indiana 46361-0041

*Re: Formal Complaint 04-FC-36; Alleged Denial of Access to Public Records
by the Indianapolis Police Department*

Dear Mr. Richardson:

This is in response to your formal complaint alleging that the Indianapolis Police Department (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by failing to respond to your request for records within the time period allotted by statute. Your request sought information regarding your arrest on November 13, 1994, including a copy of any warrant issued for your arrest. According to your complaint, the Department failed to acknowledge your request. The Department has now responded to your complaint, and a copy of that response is attached for your review.¹ For the reasons set forth below, I find that the Department's failure to timely respond to your request violates the APRA. Because the Department now denies that it maintains any records responsive to your request, its continuing failure to produce records in response to your request does not violate the APRA. That said, I note that Indiana Code 5-14-3-5(a) requires law enforcement agencies to create and maintain records containing specific and limited information regarding arrests made by the agency, and to disclose that information upon request. Your request seeks information falling within these requirements. Thus, if the Department maintains a record or records containing this information, it must produce the information required to be disclosed from that record or it must produce the record subject to any redaction for confidential material. IC 5-14-3-3, 5-14-3-5(a), 5-14-3-6(a); *see* 5-14-3-4 and particularly 4(b)(1).

¹ The response is a letter to you dated April 1, 2004. In the letter the Department denies that it maintains any records responsive to your request. The Department does not respond to your allegations that it violated the APRA by failing to timely respond to your request for records.

BACKGROUND

On February 16, 2004, you submitted a written request for records to the Department seeking information regarding your arrest on November 13, 1994, including a copy of any warrant issued for your arrest. According to your complaint, the Department failed to acknowledge or otherwise respond to your written request. On March 4, 2004, you prepared and signed the complaint in this matter, and this office received that complaint for filing on March 9, 2004. The complaint was forwarded to the Department for a response on March 16, 2004.² The Department responded by copying this office with a letter addressed to you and dated April 1, 2004. The Department does not respond to your claims challenging its failure to timely respond to your request as required by the APRA. The Department otherwise denies being in possession of any records or information responsive to your request, and directs you to the Marion County courts.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also 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. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

Because the Department offers no response to your complaint establishing either that it did not get your request or that it received your request and describing any action or inaction it took on the request, I presume for purposes of this opinion that the request was received on February 19, 2004. Accordingly, a response was due to be mailed in return by February 26, 2004. The Department's failure to return a response on or before February 26, 2004, constitutes a violation of the APRA. IC 5-14-3-9(b).

Your request seeks records and information to which you may or may not be entitled under the APRA. Specifically, your request seeks information regarding your November 13, 1994, arrest, including a copy of any warrant that was issued for that

² This office mailed a hard copy of the complaint to the Department on March 16, 2004. On the following day, at the request of the Department's legal counsel, this office sent the Department a copy of the complaint by facsimile.

arrest. An arrest warrant is a judicial document, and is subject to the rules of the Indiana Supreme Court governing the confidentiality of such documents. A public agency is required to withhold from disclosure any document that is declared confidential by or under rules adopted by the supreme court of Indiana. IC 5-14-3-4(a)(8). Indiana Administrative Rule 9 governs the confidentiality of court records and provides that “[o]nly those arrest warrants ... ordered confidential by the trial judge, prior to return of duly executed service,” are required to be kept confidential. Ind. Administrative R. 9(J).

The Department denies that it maintains a copy of any warrant that was issued for your arrest. Of course, if the Department does not maintain a requested record, its failure to produce the requested record is not itself a denial of a public record (although its failure to timely respond to your request even if only to alert you to this fact remains a violation).³

I write further to address your right to other information requested that may be in records maintained by the Department. Specifically, pursuant to Indiana Code 5-14-3-5(a), a law enforcement agency must maintain and disclose certain limited information regarding persons arrested by that agency. IC 5-14-3-5(a). Among the items required for mandatory disclosure is the name or names of the arresting officer (other than an undercover officer or agent). IC 5-14-3-5(a)(3)(B). Some of the information you seek falls within this provision. The Department denies that it maintains a copy of any arrest warrant and supporting probable cause affidavit, but the Department’s response does not otherwise address your request for information required to be disclosed pursuant to Indiana Code 5-14-3-5(a). If the Department maintains a record or records containing this information, it must produce the information required to be disclosed from that record or it must produce the record(s) subject to any redaction for confidential material. IC 5-14-3-3, 5-14-3-5(a), 5-14-3-6(a); *see* 5-14-3-4 *and particularly* 4(b)(1). The Department’s failure to produce that information if available in any record maintained or required to be maintained by the Department would be a violation of the APRA and subject to a civil action under Indiana Code 5-14-3-9.

CONCLUSION

For the reasons set forth above, I find that the Department’s failure to timely respond to your request violates the APRA. Because the Department now denies that it maintains any records responsive to your request, its continuing failure to produce records in response to your request does not violate the APRA. However, if the Department maintains any record or records containing information required to be disclosed pursuant to Indiana Code 5-14-3-5(a), it must produce the information required

³ I note that public agencies are required to maintain public records of the agency for specific periods of time pursuant to state law (*see, e.g.*, IC 5-15-6) and under approved record retention schedules of the agency. No suggestion is made here that the Department’s failure to maintain a copy of a 1994 arrest warrant violates record retention laws or any approved record retention schedule. Further, any such allegation would be more properly pursued in a civil action against the Department brought in a court of competent jurisdiction.

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to be disclosed from that record or it must produce the record subject to any redaction for confidential material.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Jill Clouse