

August 11, 2004

James William Walsh
P.O. Box 30
Pendleton, IN 46064

Re: Formal Complaint 04-FC-113; Alleged Violation of the Access to Public Records Act by Indiana State Police

Dear Mr. Walsh:

This is in response to your formal complaint alleging that the Indiana State Police violated the Access to Public Records Act (APRA) by denying you access to public records. I find that the Indiana State Police failed to respond within the required time, and failed to properly cite its reasons for denying your request for records, and therefore violated the Access to Public Records Act.

BACKGROUND

On June 17, 2004, you sent to Jon Nystrom at the Indiana State Police Post at Peru, Indiana, a second request for records relating to a certain handwriting analysis that was performed at the request of the Miami County Prosecutor's office on or about January 8, 2002 to January 14, 2002. Specifically, you are seeking the name and title of the person who performed the analysis, and a copy of the results of the test and the chain of custody of the test. You allege that you have not received any response from the Indiana State Police. You filed a formal complaint with our office that was received on July 13, 2004. First Sergeant Rick Grisel of the Lowell Regional Laboratory of the Indiana State Police responded to the complaint. We enclose a copy of his response for your reference.

In his response, he sets forth the first letter that he sent you dated July 1, 2004, in which he states that he has enclosed certain information relating to the handwriting analysis, including the laboratory number, submission number, the submitting agency, and the date submitted. The July 1 letter omits any reference to the specific items you requested. In response to a later correspondence from you, Sergeant Grisel sent you a letter dated July 26 in which he explains the data that you received from him in the July 1 letter. The July 26 letter closes with "this information is the only information I am required and allowed to release to you."

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. I.C. 5-14-3-3(a). A written record request is entitled to a written response, and if a public agency denies a record request it is expressly required by the statute to set forth the specific statutory exemption authorizing its nondisclosure. I.C. 5-14-3-9(c)(2)(A). Failure of an agency to respond within seven (7) days to a request for a record that has been mailed to the agency is a denial of the record. I.C. 5-14-3-9(b). Given the time for mail delivery from your June 17 request, a response from the State Police would have been due by June 27 at the latest. The letter sent to you on July 1 therefore would have been late. This late response is not consistent with the requirements of the Access to Public Records Act. I.C. 5-14-3-9(b).

You claim that you have not received any response to your request, and therefore you have not raised any substantive infirmities in the July 1 or July 26 letters responding to your request. If I take your allegation as true that you did not receive the July 1 or July 26 letters, you would just be reviewing them for the first time. Clearly, the State Police have denied your request for the handwriting analysis report and chain of custody information. In my conversation with Sergeant Grisel, he indicated that there is a statutory exclusion of these reports from disclosure. Where a public agency denies a person access to a public record, the agency must state the exemption authorizing nondisclosure. I.C. 5-14-3-9(c). Neither letter contains a statement of the specific exemption authorizing withholding the records you seek. I find that the State Police's belated response to your request does not comport with the requirements of the Access to Public Records Act. I must make this finding notwithstanding Sergeant's Grisel's assurance that he will incorporate the deadline and response requirements in policies and procedures of that office in the future.

CONCLUSION

For the foregoing reasons, I find that the State Police violated the Access to Public Records Act by failing to timely respond to your written request for records. Moreover, I find a violation of the Access to Public Records Act because of the failure of the State Police to state its basis for denial of the records you requested.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jon Nystrom, Indiana State Police
Sergeant Rick Grisel, Lowell Regional Laboratory