

July 1, 2005

Tyrone Frazier  
DOC # 910476  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 05-FC-113; Alleged Violation of the Access to Public Records Act by the Indianapolis Police Department.*

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Indianapolis Police Department ("IPD") violated the Access to Public Records Act ("APRA") by failing to respond to your request for public records.

#### BACKGROUND

On June 1, 2005 you filed a complaint with this office alleging that the IPD had not responded to your request for public records. Your complaint was assigned formal complaint #05-FC-113. Your complaint alleged that you sent a request for public records to IPD on April 16, 2005 and that, as of May 20, 2005, you had not received a response. Your record request was for "a copy of the dispatch case report" for Cause No. 49G058908CF096817. Although you do not allege any facts concerning the copy fee, by checking the "Copy Fee" box on the complaint form, it appears your complaint concerns the copy fee as well. Additionally, you requested, "[p]lease have the above provide the requested records in compliance with my request."

Lieutenant Jeffrey Decker responded to your complaint on behalf of the IPD by letter dated June 15, 2005. A copy of that letter is enclosed for your reference. Lt. Decker stated that he was unable to locate any type of request from you for the specified information. Additionally, he expressed that he is uncertain as to exactly what type of documentation you are seeking. He stated that tapes recording dispatched radio runs are maintained by the Marion County Sheriff's Department rather than the IPD.

Lt. Decker also stated that copies of police reports are available from the IPD Citizen's Service Desk for a cost of \$5.00. He said that the Citizen's Service Desk has not received any request from you for a copy of an incident report. Additionally, he checked under both your name and the cause number provided in your complaint and was unable to locate any such incident report.

## ANALYSIS

### *Failure to Respond within Seven (7) Days of Receipt of Request*

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. Mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The IPD is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(l). Under the APRA the IPD is required to respond to your request for records within seven (7) days of receipt of your request. If the IPD had received your request and failed to respond within seven (7) days of receipt, then a violation of APRA would have occurred. In this instance the IPD denied having received your request for records. If the IPD did not receive the request, then its obligation to respond within seven (7) days was not triggered and no APRA violation occurred.

### *Copy Fee*

Under the Access to Public Records Act, a non state public agency may charge a fee to copy a record according to a fee schedule that is established by the fiscal body of the agency. IC 5-14-3-8. Generally, a public agency may charge only for the actual cost of copying a record, which is defined in the APRA as the cost of paper and the per-page cost for use of the copying equipment. IC 5-14-3-8(d). However, the APRA states that a public agency shall collect any copying fee that is specified by statute or is ordered by a court. IC 5-14-3-8(f).

The IPD has not provided any statutory authority for charging more than the actual cost of copying the record. Additionally, I know of no statute that specifies a copying charge for an incident report. It would appear that \$5.00 for an incident report exceeds the actual cost of copying. Therefore, the IPD may not charge more than the actual cost of copying a record.

### *Authority of this Office to Compel Production of Documents*

In your complaint you requested this office to “[p]lease have the [IPD] provide the requested records in compliance with my request.” The authority to compel production of documents is not within the powers and duties of the Public Access Counselor. IC 5-14-4-10. Pursuant to the APRA, if a denial has occurred, a person 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. IC 5-14-3-9(e). Moreover, the IPD has now responded that it does not maintain the record you seek.

## CONCLUSION

For the foregoing reasons, I find that if the Indianapolis Police Department did not receive your request for Public Records then it had no duty to respond under the Access to Public Records Act. Additionally, the Indianapolis Police Department may not charge more than the actual cost of copying a record.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Lt. Jeffrey Decker