

February 17, 2005

*Re: Formal Complaint 05-FC-18; Alleged Violation of the Access to Public Records Act by the Grant County Sheriff's Department*

Dear Mr. McLaughlin:

This is in response to your formal complaint alleging that the Grant County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA") by failing to respond to your repeated requests for records. I find that the Grant County Sheriff's Department failed to respond timely to your request for records.

#### BACKGROUND

You allege that you sent to the Department, via electronic mail, a request for records. You sent your first request on October 11, 2003, and you periodically renewed your request until your final e-mail, sent January 4, 2005. You were requesting:

- The time, substance and location of all complaints or requests for assistance received by [the Department] regarding the theft of equipment from the Communication Arts Department of Taylor University from 2001-2003; including the time, date and location of any and all occurrences and the factual circumstances surrounding the incidents.
- The time, substance and location of all complaints or requests for assistance received by your office regarding vandalism of Communication Arts Department facilities of Taylor University from 2002-January 2003; including the time, date, and location of any and all occurrences and the factual circumstances surrounding the incidents.
- The time, substance and location of all complaints or requests for assistance received by your office regarding Internet abuse and false e-mails, filed by Bob Neideck.
- The time and nature of your office's response to the above mentioned complaints, incidents or requests for assistance.
- Any and all investigatory records maintained as effect (sic) to that listed above.

You allege that the Department never responded to any of your requests. You filed your formal complaint to my office on January 19, 2005. I sent a copy to the Grant County Sheriff. I enclose a copy of the response of Mr. James P. Lugar, Chief Deputy of the Department, for your reference.

In his response, Deputy Lugar states that during the time of your earlier e-mailed requests, the Sheriff was experiencing an enormous amount of scam and nuisance e-mail, and he had instructed his assistant to delete without opening any e-mail from addressees that she did not recognize. Deputy Lugar states that this information is meant only to explain, not excuse, the Sheriff's failure to respond timely to your requests for records, which he concedes were never responded to. He also states that he searched the files of the Department, and only one incident involving Taylor University--found street signs—were in the Department's log.

### ANALYSIS

Initially, I wish to note that as to the earlier requests for records your complaint is untimely because complaints must be filed within 30 days of the denial of the record. Ind.Code 5-14-5-7. However, your renewed request for records on January 4, 2005 permits me to issue this advisory opinion with respect to that request. In the case of a denial of records occurring more than 30 days prior to the filing of your complaint, I may issue an informal inquiry response, which I incorporate into this advisory opinion.

Any person may inspect and copy the public records of a public agency during the agency's regular hours of business, except as provided in section 4 of the APRA. IC 5-14-3-3(a). An agency is required to respond to a request for records within certain timeframes. If a request is mailed, sent by facsimile, or sent by electronic mail, the agency is required to respond within seven days of its receipt of the request. IC 5-14-3-9(b). A failure to respond timely to a request for records is deemed a denial under the APRA. IC 5-14-3-9(a).

The Department concedes that it did not respond to your requests for records, and I find that such failure to respond was a violation of the APRA.

The Department has now responded in substance to your request, stating that its log did not contain the information that you sought. He observed that the Department rarely responds to calls to Taylor University because other law enforcement agencies have primary responsibility for security on the campus of that private university.

### CONCLUSION

For the foregoing reasons, I find that the Grant County Sheriff's Department failed to respond to your requests for records in violation of the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Deputy James P. Lugar