

November 7, 2005

Kente Barker
#4837013-C
Marion County Jail
40 South Alabama Street
Indianapolis, IN 46204

Re: Formal Complaint 05-FC-205; Alleged Violation of the Access to Public Records Act by the Speedway Police Department

Dear Mr. Barker:

This is in response to your formal complaint alleging that the Speedway Police Department (“Department”) violated the Access to Public Records Act by failing to respond to your request for a record of the buy money fund log. I find that the Department violated the Access to Public Records Act because it failed to respond to your request.

BACKGROUND

You allege in your formal complaint that you had written the Department twice for a copy of the log used to record drug buys for January through February 14, 2001. You state that the Department has never responded to your request for this record.

I sent a copy of your formal complaint to the Department for a response. The Department responded by letter, a copy of which is enclosed for your reference. Chief Jeffrey Dine of the Department explained that you have a pending case involving cocaine dealing charges, with the Department as the arresting agency. The Department has given copies of the buy money log used in all the transactions to the prosecutor’s office. The prosecutor’s office then forwarded the information to your attorney along with other records with the formal discovery in your case. Chief Dine stated that when the Department received your record request, the Department consulted with the prosecutor, who advised the Department to not respond, because your request was for records that are deemed investigatory records of law

enforcement. The Department stated that it intends to respond to your request when the deputy prosecutor returns from an absence from her office.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). When a public agency receives a request via U.S. Mail, it is required to respond within seven (7) days of receipt. IC 5-14-3-9(b). The public agency may deny a written request if the denial is in writing and if the denial includes 1) the exemption or exemptions authorizing the agency to withhold the record, and 2) the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). A public agency is required to provide a person at least one (1) copy of the public record if the agency has reasonable access to a machine capable of reproducing the public record. IC 5-14-3-8(e).

A law enforcement agency is authorized to withhold a record that is an investigatory record of law enforcement. IC 5-14-3-4(b)(1). "Investigatory record" means information compiled in the course of the investigation of a crime. IC 5-14-3-2(h).

The Department admits that it did not issue a response to your request for the record of the buy money fund log. If the agency intended to deny you the record, either because it had already provided it to your authorized representative, or because it is an investigatory record of law enforcement, the Department was required under the APRA to issue a timely response. The Department failed to comply with the Access to Public Records Act when it failed to respond to your request for a record.

CONCLUSION

For the foregoing reasons, the Speedway Police Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chief Jeffrey Dine