

January 19, 2006

Stuart Showalter  
P.O. Box 374  
Lebanon, IN 46052

*Re: Consolidated Formal Complaint 05-FC-260; 06-FC-4; 06-FC-15 Alleged  
Violation of the Access to Public Records Act by the Boone County Sheriff*

Dear Mr. Showalter:

This is in response to your formal complaints alleging that the Boone County Sheriff ("Sheriff") violated the Access to Public Records Act by failing to respond or give you records. I find that the Boone County Sheriff violated the Access to Public Records Act.

#### BACKGROUND

You have filed three complaints with the Office of the Public Access Counselor against the Boone County Sheriff. In the first, assigned number 05-FC-260, you allege that you mailed a request for records to the Sheriff on November 22, 2005. You requested "any document, including...petitions, dispositional decrees, detention orders, transfer orders, transfer of custody, custody evaluations and intake screenings related to the detention of [L.P., date of birth and address]...in a secure detention facility." You allege that the Sheriff has not responded to your request. In the second complaint, assigned number 06-FC-4, you mailed a request to the Sheriff on December 6, 2005. You sought "any document...or other material stating the classification level of your facility of the detention of inmates; and if the facility has a non-secure detention level, please provide any document...or other material that denotes such area as a separate facility including, address, director and budget." You allege you have not received a response to this request.

In the third complaint, assigned number 06-FC-15, you mailed a request to the Sheriff on December 15, 2005 for any documents "in place as of 01 February 2005 and any amendments or new policies promulgated since that time regarding any writings setting forth procedures: 1) for transporting prisoners to the Boone County Jail; 2) for serving felony arrest warrants in Boone

County; 3) for searching prisoners during admission to the Boone County Jail or any other holding facility managed by your department; 4) for medical screening on new inmates admitted to the Boone County Jail; and 5) for accommodating special dietary needs/requests of inmates at the Boone County Jail.” You allege that you have not received any response to this request.

I sent a copy of each complaint to the Sheriff. For 05-FC-260, I requested a response by January 6; for 06-FC-4, I requested a response by January 18. As of today, I have not received a response to these complaints. For 06-FC-15, I requested a response by January 27, which is several days after the writing of this opinion. For any complaint, my office allows about two weeks for response by the public agency; state law mandates that I issue an opinion within 30 days of receipt of the complaint. Ind. Code 5-14-5-9. My staff attorney spoke briefly with Sheriff Brannon on January 13 to ask whether he intended to file a belated response to your complaint 05-FC-260. Although Sheriff Brannon promised a response, none has been forthcoming. I am required to issue an opinion in 05-FC-260 today. Because the other two complaints contain similar allegations against the same public agency, I am consolidating the three complaints for purposes of issuance of this advisory opinion.<sup>1</sup>

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency’s regular business hours, unless the record is excepted from disclosure under section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). A public agency that receives a request for records via U.S. Mail is required to respond within seven (7) days of receipt of the request, or the request is deemed denied. IC 5-14-3-9(b). A public agency may deny a written request for records if the denial is in writing and if the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). If a public agency does not maintain a record that is responsive to a particular request, the public agency should indicate that no such record exists.

### *05-FC-260*

In this complaint, you sought records of a person that you identified by name, date of birth, and address. This person was fifteen years old on the date that you alleged she was in a secure detention facility in Boone County. Because she was under eighteen years of age, she was a “child” for purposes of the juvenile law. *See* IC 31-9-2-13(d). Records relating to the detention of any child in a secure facility shall be open to public inspection. IC 31-39-3-3. “Secure facility” for purposes of the juvenile law, means a place of residence, other than a shelter care facility, that prohibits the departure of a child. IC 31-9-2-114. A juvenile detention facility is a type of secure facility. *See* IC 31-31-8-2.

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<sup>1</sup> Ind. Code 5-14-5-8 requires that I “immediately forward a copy of the complaint to the public agency that is the subject of the complaint.” I am not required by any law to invite the public agency’s response or await a response to a complaint. However, I often find it helpful to have a public agency’s response to a complaint, and I always consider any response that I receive prior to preparing an advisory opinion.

The Sheriff violated the APRA by failing to respond to your request for records within seven days of his receipt of your request. Moreover, the records that you seek relate to the detention of a child in a secure facility. Therefore, if the Sheriff maintains a record or records that are responsive to your request, he is required to disclose them to you. Denial of the records is a violation of the APRA. IC 5-14-3-3. At a minimum, if the Sheriff maintains that some of the records are *not* subject to disclosure, the Sheriff is required to state in writing his basis for withholding the record, with citation to the statute.

*06-FC-4*

In this complaint, you sought records disclosing the classification level of the facility for the detention of inmates in Boone County. Also, you sought records regarding information about any part of the facility that is non-secure. You allege that the Sheriff has not responded to this request. The Sheriff violated the Access to Public Records Act if he failed to respond within seven days of receipt to your request for records. In addition, I am not aware of any exemption that would apply to the records that you seek. If the Sheriff does not maintain any records responsive to this request, or if the Sheriff intends to deny the record, he should state his basis for not disclosing the record or records. The Sheriff's failure to do so is a violation of the Access to Public Records Act.

*06-FC-15*

Your third complaint follows your request for various procedures or policies regarding the Boone County Sheriff or the Boone County Jail or other detention facility. As with the other two complaints, you allege that the Sheriff has yet to respond. For this complaint, you correctly calculated that the date of denial, with time for mailing, would be December 28, 2005. You filed your complaint on January 13, 2006. If the Sheriff has failed to respond to your request as you allege, he has violated the Access to Public Records Act. Again, I am not aware of any exemption that would apply to the records that you seek, but the Sheriff was duty-bound to identify any record that is nondisclosable, and state the basis for withholding the record. In the absence of any response, the Sheriff has violated the APRA.

#### CONCLUSION

Taking your unrefuted allegations as true, I find that the Boone County Sheriff violated the Access to Public Records Act when he failed to respond to your requests for records. This violation of the Access to Public Records Act is actionable under IC 5-14-3-9(e).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Sheriff Brannon