

March 16, 2005

George F. Iverson
5743 S. Nineveh Road
Franklin, IN 46131

Re: Formal Complaint 05-FC 34; Alleged Violation of the Access to Public Records Act by the Edinburgh Police Department and the Johnson County Sheriff's Department

Dear Mr. Iverson:

This is in response to your formal complaint alleging that the Edinburgh Police Department ("Police Department") and the Johnson County Sheriff's Department ("Sheriff") violated the Access to Public Records Act by denying you access to a handwritten incident report.

BACKGROUND

In your complaint, filed February 14, 2005, you state that you have been denied access to incident number E03120419. You state that "this incident report is handwritten; not computer generated." You also claim that the only document each public agency would provide is a computer generated deputy supplemental report. The public agencies denied you this handwritten report, you allege, without citing the specific reasons for denial in any of their responses. You do not include a copy of any of your requests for records, but state that you requested this record from the Police Department on February 4, 2005, and from the Sheriff on February 4, 2005.¹

I sent a copy of your complaint to the Sheriff and the Police Department. Each agency responded in writing. I enclose a copy of the letter responses for your reference.

¹ You also have included the Johnson County Prosecutor's Office in your complaint, but you state that you requested the record from the prosecutor on April 16, 2004. This request, if denied, was denied more than 30 days before you filed your complaint. Therefore, your complaint against the prosecutor is untimely. Ind.Code 5-14-5-7. You also have not provided me with any documentation or factual matter regarding the complaint against the prosecutor from which I may issue an informal inquiry response under IC 5-14-4-10(5).

With respect to the Sheriff's response, Mr. Douglas Cox, Colonel for the Sheriff, reported that he had provided to you various records regarding the incident report, including the offenses information, inmate intake and release, and deputy report concerning the December 27, 2003 incident. He stated that subsequent correspondence from you regarding your request had indicated that you believed that the Sheriff had omitted a portion of the remand slip that contains the completed charging officer's affidavit of warrantless arrest. Mr. Cox assured me that there is no portion of the form that was omitted from the records supplied to you, and that the Sheriff has fulfilled your request for records in full.

The Police Department's response to your complaint also named the items that had been disclosed to you as a result of your request, including the entire arrest report, the evidence sheets, and the daily log. He stated that the Police Department does not have any handwritten reports on the report numbered E03120419.

Both agencies supplied me with copies of the records that were provided to you.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the APRA. IC 5-14-3-3(a). Your complaint specifies that you were denied access to incident report number E03120419, and that the incident report is handwritten, not computer generated. You fail to state on what basis you believe there to be handwritten reports. The documentation that the Police Department and Sheriff provided shows what appear to be full incident reports and other documentation regarding the incident that occurred on December 27, 2004. Moreover, with respect to the Sheriff's request, you had never clarified for the Sheriff that you expected to receive a handwritten incident report, prior to the time that you filed your complaint. Therefore, the Sheriff cannot be held accountable for denying you a record that you never requested prior to filing your complaint.

You had sent a February 7, 2005 follow-up letter to the Police Department stating that "the contents of the public records your office provided...in response to [the] 2/4/05 written request does not include a copy of incident report E03120419. The report we are looking for is not computer generated." This, too, falls short of stating that you are requesting a handwritten report. In any case, the Police Department, in its response to your complaint, states that it does not have any handwritten reports on this incident.

A public agency is not required to produce a record for which it has not received a request. In addition, a public agency is not required to disclose a record that it does not maintain and is not required to maintain. If the public agency has received a request for a record, and the agency does not maintain the record, it should so state in its response to the request. However, you sent no specific request for a handwritten report to either the Police Department or the Sheriff, from the information I have been supplied. Your complaints against the Police Department and the Sheriff have no merit, from the record now before me. Moreover, the Sheriff and the Police Department state that they do not maintain a handwritten version of the

incident report. If you believe that either public agency is not being forthcoming with the record, your remedy is to file a lawsuit under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that neither the Edinburgh Police Department nor the Johnson County Sheriff's Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Douglas Cox
Lisa Brockman