

March 28, 2005

Mr. Herbert Scott Foust
D.O.C. # 124101
Putnamville Correctional Facility
1946 W. U.S. Highway 40
Greencastle, IN 46135

Re: Formal Complaint 05-FC-41; Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Elkhart County Sheriff's Department ("Sheriff") violated the Access to Public Records Act ("APRA") by failing to provide you with a record. I find that the Elkhart County Sheriff's Department denied you a record in violation of the APRA.

BACKGROUND

On January 19, 2005, you mailed a request for information regarding the receipt of Jason L. Hershberger in lock-up at the Elkhart County Jail, for any incident dating from 2000 to the present. The Sheriff responded to your request, which you allege that you received on February 3, 2005. In his response, the Sheriff enclosed a form for you to request a limited criminal history on Mr. Hershberger. You filed your formal complaint to my office on February 24, 2005. In your complaint, you allege that you were denied the record you sought, and that the Sheriff did not respond to your record request in a timely manner.

I sent a copy of your complaint to the Sheriff. Undersheriff Julie Dijkstra of the Elkhart County Sheriff's Department responded by letter dated March 4, 2005, a copy of which is enclosed for your reference. Ms. Dijkstra stated that "because the request was for information on someone other than Mr. Foust himself, and because Mr. Hershberger is no longer an inmate at our facility, my records supervisor believed the request fell under IC 10-13-3-27...and felt the information requested would be on a limited criminal history."

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. Ind. Code 5-14-3-3(a). A public agency must respond to a request for records within certain timeframes, or the request is deemed denied. If the agency receives a request by U.S. Mail, by facsimile, or by electronic mail, the request is deemed denied if the agency fails to issue a response within seven (7) days. IC 5-14-3-9(b).

You state that you mailed your written request for records to the Sheriff on January 19, 2005. You also allege that you received the response on February 3, 2005. This was fifteen days after you sent your request. Assuming three days for mailing, the Sheriff would have received your request by January 22, which was a Saturday. The Sheriff was required to issue a response by Monday, January 31, which was seven days after the next business day on which the request was received, or January 24. The Sheriff does not state when he sent his response, but it appears that the response may have been timely issued, where you received it on February 3, three days after January 31. If the Sheriff sent his response to you by January 31, then the Sheriff timely responded to your request under the APRA. If the response was tardy, the request would have been deemed denied under the APRA.

In any event, the Sheriff responded to you by stating that it believed that you were requesting a limited criminal history. The Sheriff acknowledges that it based this belief not on anything in your request, but rather on the fact that the request was for information regarding someone other than you, and the fact that the subject of the request was no longer an inmate at the Elkhart County Jail. This response appears to ignore the clear mandate at IC 5-14-3-5(b) that certain information regarding a person received in a jail or lock-up be made available for inspection and copying. In fact, your request is precisely the information that is required to be made available about a person received in a jail or lock-up. Nothing in IC 5-14-3-5(b) prevents you, or any other member of the public, from receiving this information about another individual.

The Sheriff's response to your request is similar to one involving a request you made to the Elkhart County Sheriff's Department in 2004. In *Opinion of the Public Access Counselor 04-FC-97*, you had requested of the Sheriff your own record relating to your incarceration within the Elkhart County Security Center. The Sheriff requested that you complete a "Request for Limited Criminal History Information" form and charged you a fee that the public access counselor held to be excessive, in part because it appeared that you had not requested a limited criminal history. Further, in that 2004 opinion, the public access counselor stated that even if an exemption to disclosure applied to part of your request for records, the Sheriff was obligated to provide you with certain information regarding your receipt in lock-up under IC 5-14-3-5(b).

I also note that criminal history data is defined in IC 10-13-3-5 to be information collected by criminal justice agencies [and others] consisting of (1) "identifiable descriptions and notations of arrests, indictments, informations or other formal criminal charges; ...and (3) Any disposition, including sentencing, and correctional system intake, transfer, and release. "Limited criminal history" is solely arrests and criminal charges, including dispositions of those charges.

This record is discrete from the information that you sought in your request for lock-up information.¹

The information that you requested regarding Jason L. Hershberger is subject to inspection and copying under IC 5-14-3-5(b). The Sheriff, in sending you the limited criminal history form, denied you the record that you sought, in violation of the APRA. This denial is actionable under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Elkhart County Sheriff's Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Undersheriff Julie Dijkstra

¹ Information required to be made available for inspection and copying about a person received in a jail or lock-up is: (1) Information that identifies the person including the person's name, age, and address; (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held; (3) The time and date that the person was received and the time and date of the person's discharge or transfer; and (4) The amount of the person's bail or bond, if it has been fixed. IC 5-14-3-5(b)(1) through (4).