

June 6, 2005

Herbert Foust
Reg. No. 124101
Putnamville Correctional Facility
1946 W. US Hwy. 40
Greencastle, IN 46135

Re: Formal Complaint 05-FC-87; Alleged Violation of the Access to Public Records Act by the Allen County Sheriff's Department.

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Allen County Sheriff's Department violated the Access to Public Records Act by denying your request for records. I find that the Allen County Sheriff's Department violated the Access to Public Records Act.

BACKGROUND

On April 30, 2005 you filed a complaint with this office alleging that the Allen County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"). Your complaint was assigned #05-FC-87.

On April 22, 2005 you sent a written request for public records to the Department. On April 29, 2005 the Department responded in writing stating, "Please be advised the information you request requires a subpoena."

A copy of your complaint was forwarded to the Department. Assistant Allen County Attorney John O. Feighner responded on behalf of the Department by letters dated May 11, 2005 and May 18, 2005. I have included copies of those letters for your reference. In the May 18, 2005 letter he stated that the Department intended to comply with the APRA and that the response in the April 29, 2005 letter was due to confusion as to the identity of the person who is the subject of your records request. In that letter Mr. Feighner asked that you clarify which William Kahn were you seeking information for.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." IC 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." IC 5-14-3-1. Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. *See generally*, IC 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under IC 5-14-3-4. IC 5-14-3-3(a). The burden lies with the public agency to show that a public record is not disclosable, and if access is denied to put into writing the statutory basis for that denial. *See*, IC 5-14-3-1 and 5-14-3-9(c). Under IC 5-14-3-9(e), a person who has been denied access to a public record may file an action in circuit or superior court to compel the public agency to permit inspection or copying of the public record.

Under the APRA, law enforcement agencies have discretion over the disclosure of investigatory records, which are defined as "information compiled in the course of the investigation of a crime." *See*, IC 5-14-3-2(h) and IC 5-14-3-4(b)(1). Law enforcement agencies must produce upon request, however, certain information on arrests, persons being held in jail and a department's responses to complaints, accidents or requests for assistance. IC 5-14-3-5. The APRA provides that a law enforcement agency may not deem information included in IC 5-14-3-5 to be an investigatory record that is disclosable at the discretion of the agency under IC 5-14-3-4(b)(1).

Your request, which you stated was pursuant to IC 5-14-3-5(b) was for the Department to "provide [you] with or disclose the following Public Information: charge(s), date(s) and bond info. for each time William Kahn was held in this jail." The Department responded that the information could only be disclosed with a subpoena. The Department did not provide any statutory basis for this denial as is required by IC 5-14-3-9(c)(2). According to Mr. Feighner, the Department erred because of confusion over which William Kahn you were referring to. He now states that the Department will provide you with the information requested that is required to be disclosed to you under Indiana Code section 5-14-3-5. I note that the Department's explanation doesn't explain why you were initially told that a subpoena would be required. However, the Department's letter of May 18, 2005 does what the initial letter should have done; it requests clarification of your request.

It is my opinion, therefore, that the Department's denial of access to public records in response to your request was not appropriate under the APRA. Further, the Department should have included the statutory basis for any denial, which was not done in response to your request. While this does not change my opinion on this matter, it appears that Mr. Feighner will provide to you in the near future the information that should have been disclosed to you by the Department under Indiana Code section 5-14-3-5.

CONCLUSION

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

Sincerely,

Karen Davis
Public Access Counselor

cc: John. O. Feighner