

June 20, 2005

Herbert Foust
#124101
Putnamville Correctional Facility
1946 W. U.S. Highway 40
Greencastle, IN 46135

Re: Formal Complaint 05-FC-100; 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 ("Sheriff") violated the Access to Public Records Act ("APRA") by failing to give you records to which you are entitled. I find that the Sheriff violated the APRA.

BACKGROUND

On May 2, 2005, you sent a letter to the Sheriff requesting disclosure of the following information with respect to William Kahn: all records of arrests or detainments of William Kahn, to include charges, bond and release information, arresting agency and arresting officer information. You received a letter denying your request from Sandra Shady of the Allen County Sheriff's Department. She stated that "although the APRA indicates that an individual previously incarcerated in a facility is entitled to his own criminal record, you have requested a criminal history of someone other than yourself."

You filed your formal complaint on May 20, 2005. In your complaint, you requested priority status; however, because you have alleged none of the circumstances for which priority status may be granted, I have issued this opinion within 30 days rather than seven. *See* 62 IAC 1. I sent a copy of your complaint to the Sheriff. In response, Captain P.L. Kite submitted a copy of a letter that he had addressed to you. In the letter, Captain Kite explained that Ms. Shady had erred in telling you that you were not entitled to the record, and the Allen County Sheriff's Department had rectified the situation so that all employees handling records requests are aware of the public access laws. Further, Captain Kite stated that his agency maintains records on

several different persons by the name of William Kahn. He asked that you send him any additional information that you may have on Mr. Kahn, including approximate dates of incarceration, approximate age, or middle initial.

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 APRA. The APRA provides that a record that is declared confidential by state statute may not be disclosed. Ind. Code 5-14-3-4(a)(1). Certain types of law enforcement records, including investigatory records, are required to be released under section 5 of the APRA. Included among these types of records are information about persons arrested, including any charges and the arresting officer and arresting agency. IC 5-14-3-5(a). In addition, information on a person received in a jail or lockup, including the amount of the person's bail, must be disclosed. IC 5-14-3-5(b).

Limited criminal history information may not be released except under specific circumstances. IC 10-13-3-27. "Limited criminal history" is defined as information with respect to any arrest or criminal charge, which must include a disposition." IC 10-13-3-11. Limited criminal history is subject-specific; in other words, a limited criminal history relates to a particular person about whom the information pertains. *See generally* IC 10-13-3.

If you had requested a limited criminal history pertaining to William Kahn, the Sheriff would have been obligated to cite the state statute restricting access to the history and inviting you to show that you are entitled to the information under IC 10-13-3-27. I admit that upon reading your request, I believed that you may have been seeking a limited criminal history because your request was for all arrest information on a particular person. However, it appears certain that your request is for section 5(a) and 5(b) information, because you are seeking the amount of bail, the arresting agency, and the arresting officer, information that does not appear to be part of a limited criminal history.

In the event that Ms. Shady believed your request was for a limited criminal history, she should have cited to IC 10-13-3-27 and IC 5-14-3-4(a)(1) to except it from disclosure. Instead, she cited only section 4 of APRA, without citing the specific exemption she believed would apply to the record. Therefore, I believe her conclusion that you were requesting an individual's limited criminal history was understandable; still, she did not comply with the requirement that a denial of a record be accompanied by a specific statutory exemption. IC 5-14-3-9(c).

Where your request was for any record showing the arrest and/or incarceration information of William Kahn, and the information you seek must be disclosed under IC 5-14-3-5(a) and (b), it appears that the only barrier to fulfilling your request is more specific information on the identity of William Kahn. To the extent that you cannot supply more information, you may indicate whether you would like records on all William Kahns.

I note that some law enforcement agencies may not index their records by arrestee name, making it difficult for them to search their records for section 5 information without the requester

specifying an approximate date of arrest or incarceration. A public agency is not required to research its records to fulfill a public records request.

CONCLUSION

For the foregoing reasons, I find that the Allen County Sheriff's Department violated the Access to Public Records Act by failing to properly respond to your request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Captain P.L. Kite