

March 12, 2008

James Mitchell
DOC #121924
PO Box 41; CW331
Michigan City, Indiana 46361

Re: Formal Complaint 08-FC-62; Alleged Violation of the Access to Public Records Act by the LaPorte County Sheriff

Dear Mr. Mitchell:

This advisory opinion is in response to your formal complaint alleging the LaPorte County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Sheriff's response is enclosed for your reference. It is my opinion the Sheriff did not violate the APRA by not responding to a request he did not receive.

BACKGROUND

You allege that you submitted a request to the Sheriff for disciplinary reports related to you while you were incarcerated at the LaPorte County Jail. You allege you have made at least seven requests for the information, and the Sheriff has denied all requests. You mailed this compliant on February 11, 2008, and I received it on February 20.

The Sheriff responded to the complaint by letter dated February 25. The Sheriff contends he finds no record of having received your request. Further, regarding the specific request, the Sheriff contends the request must be made through the Indiana Department of Correction.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Sheriff is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Sheriff during regular

business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Sheriff asserts his office did not receive your request. If the Sheriff did receive your request, he would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Sheriff did not receive your request, he did not violate the APRA by not responding.

Regarding the Sheriff's indication that your request must be made through the Department of Correction, that is certainly true if the records you request were created, received, retained, maintained or filed by or with the Department of Correction. *See* § 5-14-3-3, 5-14-3-2(m). If, however, you request records created, received, retained, maintained or filed by or with the Sheriff's office, the Sheriff has a duty to provide access to those records unless an exception to disclosure exists. I.C. § 5-14-3-3.

CONCLUSION

For the foregoing reasons, it is my opinion the Sheriff did not violate the APRA by not responding to a request he did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Michael Mollenhauer, LaPorte County Sheriff