

August 5, 2004

Mr. David W. Woolf
614 Killian Dr.
Beech Grove, IN 46107

Re: Advisory Opinion 04-FC-108; Alleged Denial of Access to Public Records by
the Bartholomew County Sheriff's Department

Dear Mr. Woolf:

This is in response to your formal complaint, which was received on July 6, 2004. You have alleged that the Bartholomew County Sheriff's Department ("Department") violated the Indiana Access to Public Records Act, ("APRA") Ind. Code §5-14-3. Specifically, you claim that the Department denied your request for records relating to a June 10, 2003 execution sale. Peter C. King, Attorney for the Department, responded in writing to your complaint. A copy of his response is enclosed for your reference.

BACKGROUND

On June 2, 2004, you submitted a written request to the Department for "(a)ny records in relation to the June 10, 2003 Execution Sale held at and by the Sheriff of Bartholomew County of the real estate known as Lot Numbered (1), One Perry Plaza, 1650 N. State Road 46, Columbus, Indiana." On June 3, 2004, the Department wrote a letter advising you that the records would be available for pick up by June 4, 2004, between 12:00 noon and 4:00 p.m. On June 4, 2004, your attorney-in-fact ("agent") went to the Department to pick up the documents for you. The Department refused to give those documents to your agent and advised that you needed to come in to pick up the documents in person. On June 11, 2004, your agent returned to the Department with a copy of a signed, executed Special Power of Attorney document that specifically authorized your agent to pick up the documents for you. The Department then refused to give the documents to your agent because your agent did not present the original Special Power of Attorney document. One hour later on that same day, your agent returned with the original Special Power of Attorney document. At that time, a Department representative advised your agent that everyone had gone home and that no one was available to produce the documents for you.

You then filed a complaint alleging that the Department's failure to provide your agent with the documents you requested constitutes a denial of your rights under the APRA. On July 8, 2004, I forwarded a copy of your complaint to the Department. Attorney King responded that no denial has occurred as the records have been available for you to pick up in person since June 4, 2004. His letter further states that you have failed to "personally appear to pick up the records."

ANALYSIS

The public policy of the Access to Public Records Act 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." I.C. §5-14-3-1. The Department is a public agency for the purposes of the APRA. 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 under I.C. §5-14-3-4. I.C. §5-14-3-3(a). Upon receipt of a records request, the public agency is required to provide the requested copies to the person making the request, or allow the person to make copies on the agency's equipment or on the person's own equipment. I.C. §5-14-3-3(b).

Nothing in the Access to Public Records Act prohibits a requestor from having his or her agent or representative act on the requestor's behalf. Indeed, most public agencies, such as the Department, employ the use of representatives to act on their behalf. Although the Department has made the appropriate copies, they have, on three separate occasions, refused to provide your representative with the documents you requested. Those records are public records; as such, they may be given to any person requesting them. Furthermore, I.C. §5-14-3-4 states that public agency may not deny or interfere with the rights of access set forth under the APRA, and may not withhold a record from disclosure unless it falls within one of the exemptions set forth in Indiana.

It is my opinion that a requestor may exercise his or her rights to inspect and copy records through an agent or attorney-in-fact, if the requestor so chooses, and that the Department's failure to provide the copies you requested to your attorney-in-fact is a violation of the Access to Public Records Act.

CONCLUSION

For the reasons set out above, it is my opinion that the failure of the Bartholomew County Sheriff Department to provide your agent with the requested records is a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Peter C. King, w/out enclosures