

April 5, 2004

Mr. Michael Hunt
No. 961894
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, Indiana 47838-1111

*Re: Formal Complaint 04-FC-38; Alleged Denial of Access to Public Records by the
Sullivan County Prosecuting Attorney*

Dear Mr. Hunt:

This is in response to your formal complaint alleging that the Sullivan County Prosecuting Attorney (Prosecutor's Office) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by failing to respond to your request for records within the time period allotted by statute. The Prosecutor's Office has responded to your complaint, and a copy of that response is enclosed for your review. For the reasons set forth below, I find that the Prosecutor's Office did not violate the APRA as alleged in your complaint.

BACKGROUND

On January 30, 2004, you prepared a written request for records addressed to the Prosecutor's Office. Your request sought information from the last eight years related to incidents arising out of the Wabash Valley Correctional Facility involving (1) offender-on-offender crime resulting in physical injury; (2) offender-on-offender crime including the use of weapons resulting in serious bodily injury; and (3) offenders alleged to be in the possession of a weapon on state property as a convicted felon. When no response was forthcoming, you brought the instant complaint and requested priority status and expedited consideration.

The Prosecutor's Office responds first that it has no record of receiving your request, and accordingly denies receipt. Having now been provided with the request as an attachment to the complaint filed with this office, the Prosecutor's Office further responds that you are not otherwise entitled to relief. The Prosecutor's Office asserts that it maintains its records as case files, but does not maintain records with information organized in the form that you are

requesting. The Prosecutor's Office argues that the APRA does not require it to scour every case file and piece of paper within that agency to search for the information you are seeking.

ANALYSIS

As a threshold matter, I decline to find your complaint subject to priority status and expedited review pursuant to Indiana Administrative Code 62 IAC 1-1-3. In that regard, your complaint fails to cite to any of the specific criteria set forth in Indiana Administrative Code 62 IAC 1-1-3 upon which you base your request for expedited status, and it is not otherwise apparent from reviewing the factors how any of them can be asserted to be applicable to your claim. Moreover, you fail to offer any facts establishing a basis for expedited review under any of the criteria set forth in the Indiana Administrative Code.

On the merits, I decline to find the Prosecutor's Office in violation of the APRA as alleged in your complaint. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of *receipt* of the request. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).¹ Here, the Prosecutor's Office expressly denies receipt of your request and avers that it does not maintain any record showing receipt. While you provide a copy of a record request dated January 30, 2004, there is no evidence establishing that the request was posted by you on that date² or that it was subsequently received by the Prosecutor's Office. Accordingly, I decline to find the Prosecutor's Office in violation of the APRA for failing to timely respond to a request for records it alleges it never received.³

I write further to address the substantive response now offered by the Prosecutor's Office in answer to your request. The Prosecutor's Office correctly observes that your request seeks information regarding every incident referred to the Prosecutor's Office in the last eight years, whether or not actually resulting in formal charges, involving offenders at the Wabash Valley Correctional Facility and relating to various alleged crimes involving the use of weapons and/or resulting in bodily injury. The Prosecutor's Office avers that it does not maintain any records that are responsive to your request in the form requested, and that rather than seeking a specific

¹ For purposes of this opinion, I calculated February 9, 2004, as the date of the alleged denial.

² The face of the record request shows that the date was changed from January 31, 2004, to January 30, 2004.

³ Of course, if evidence is later developed in any civil action brought pursuant to Indiana Code 5-14-3-9 to establish that the Prosecutor's Office received but failed to timely respond to the request, its failure to timely respond would violate the APRA. IC 5-14-3-9(b).

public record, your request would require the Prosecutor's Office to "review every filed case and every unfiled case to compile [the requested] information."

A request for public records must "identify with reasonable particularity the record being requested." IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party's request. The Prosecutor's Office avers that it does not maintain records responsive to your request; that is, records organized and readily identifiable as complaints involving offenders at the Wabash Valley Correctional Facility who were in altercations involving weapons or resulting in bodily injury. Because the Prosecutor's Office does not maintain records responsive to your request, its failure to produce records is not a "denial" of public records in violation of the APRA.

CONCLUSION

For the reasons set forth above, I find that the Prosecutor's Office did not violate the APRA as alleged in your complaint.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Robert Springer