
OPINION OF THE PUBLIC ACCESS COUNSELOR

JASMINE ELLIOTT,
Complainant,

v.

UNION COUNTY SHERIFF'S OFFICE,
Respondent.

Formal Complaint No.
17-FC-179

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Union County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"). Ind. Code §§ 5-14-3-1 to -10. The Sheriff responded to the complaint on August 2, 2017. The response is enclosed for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 26, 2017.

BACKGROUND

Jasmine Elliott (“Complainant”) contends that the Union County Sheriff’s Office violated the APRA by failing to provide records responsive to a public records request.

On April 25, 2017, Elliott submitted a public records request to the Sheriff requesting:

“all records of the police reports” and “the 911 recordings that pertains to and was made by Jessica Elliott that resided at 4386 Stone Road North, Liberty, Indiana 47353 when the police reports and 911 calls were placed” for the months of July 2015 through October 2015.

Elliott filed a formal complaint with this Office dated May 23, 2017, which my Office received on May 25, 2017. The Complainant admitted that the Sheriff had acknowledged her records request in a phone call on May 1, and that the Sheriff would send the records to her. The Complainant filed the complaint after receiving no records. Upon notifying the Sheriff’s office of the complaint, the Sheriff called my Office on May 30 and said that on May 18, 2017, his office had left a voicemail for the Complainant stating that there would be a fee for the requested copies and that she needed to come to the Sheriff’s Office to show identification.

The Sheriff informed my Office he would have the copies sent by certified mail that day along with a letter that would notify the Complainant of the cost for copies. In a letter dated June 1, 2017, the Complainant notified our office that she spoke on the phone with the Sheriff’s Office regarding her records request and that she was withdrawing her formal complaint against the Sheriff.

On June 3, 2017, Elliott submitted another records request to the Sheriff. On this occasion she requested:

All records of charges made against Jessica Elliott regarding a complaint “called in by the family of Justin Clayton of Liberty, Indiana” on September 23, 2015, as well as the related arrest warrant.

Elliott also noted that she did not receive a 911 call recording from December 19, 2015, and that Jessica Elliott no longer resided at the address listed on the call log.

The Complainant filed another formal complaint alleging a denial under APRA because she had not received any records responsive to her request. This Office received the complaint on June 26, 2017, and notified the Sheriff of the complaint on July 25, 2017. The Sheriff responded on August 2, 2017.

The Sheriff provided all correspondence and paperwork that had been sent to the Complainant up to August 2, 2017. The Complainant’s second request was marked as received by the Sheriff’s Office on June 7, 2017, and a note written by Lynn Browning of the Sheriff’s Office noted that she had spoken with the Complainant on the phone at 2:30 p.m. on June 7 and acknowledged that the Sheriff’s Office had received her request.

In a letter dated August 1, 2017, the Sheriff notified the Complainant that the call in question made on December 19, 2015, originated “when Jessica Elliott called from that address” and that Jessica Elliott was the complainant for the call. The Sheriff further noted in regards to that 911 call that

the Complainant would need to send a formal records request to the Union County 911 Dispatch and included a copy of the Union County 911 Dispatch's official request form. Additionally, the Sheriff notified the Complainant that the department had no records responsive to the Complainant's request for charges and warrants and recommended the Complainant contact the Prosecutor's Office to request those records.

ANALYSIS

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." Ind. Code § 5-14-3-1. The Union County Sheriff's Office is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the Sheriff's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a). A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received. Ind. Code § 5-14-3-9(c).

The APRA does not require records to be provided to the requestor within seven days of receiving a records request in writing. An acknowledgement of the records request satisfies the required response under the APRA.

In this case, the Union County Sheriff's Office responded with a phone call to the Complainant that acknowledged the request on the same day the request was received. Under

APRA, this is a sufficient acknowledgment of a records request submitted in writing. A written response is only required when denying a records request submitted in writing. *See* Ind. Code § 5-14-3-9(d)(1).

Public agencies, however, are required under APRA to provide the records requested within a *reasonable time* after receiving the request. *See* Ind. Code § 5-14-3(b)(1). “Reasonable time” is not defined in the APRA. Still, in Opinion of the Public Access Counselor 16-FC-267, I opined the following:

The circumstances affecting the “reasonableness” of timely production of documents include: size of the public agency, number of pending requests, complexity of the request, and any other operational considerations which may reasonably affect the public records process.

In this case, there was a gap of 38 business days between when the Sheriff’s Office received Elliott’s second request and when the Sheriff’s Office sent the letter to the Complainant notifying her they did not have records responsive to her request.

While I do not have enough evidence to determine whether this gap was reasonable—which it may be—I encourage the Sheriff’s Office to remember APRA’s requirement to either produce documents responsive to a request or to notify the requestor that the agency does not possess records responsive to a request within a reasonable time based on the circumstances described above.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Union County Sheriff's Office has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor