



# STATE OF INDIANA

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December 30, 2008

James Lease  
DOC #167856  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 09-FC-1; Alleged Violation of the Access to Public Records Act by the Huntington County Sheriff*

Dear Mr. Lease:

This advisory opinion is in response to your formal complaint alleging the Huntington County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. The Sheriff's response to the complaint 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 on November 3, 2008 you submitted a request to the Sheriff for access to an arrest warrant. You allege the Sheriff failed to respond to the request.

The Sheriff responded to the complaint by electronic mail message dated December 4, 2008 from Sheriff Kent Farthing. The Sheriff contends he did not receive the request. After receiving the complaint, the Sheriff has located record responsive to your request and indicated he was sending such to you on December 4.

## 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(m). 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 he did not receive your request. If the Sheriff did receive your request, the agency 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.

The Sheriff has now retrieved any records responsive to your request and is sending those records to you.

#### 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: Kent Farthing, Huntington County Sheriff