

March 21, 2006

Sent Via Facsimile

Richard L. Shirey
1200 E. Main Street
Muncie, IN 47305

Re: Formal Complaint 06-FC-39; Alleged Violation of the Access to Public Records Act by the Indiana Department of Homeland Security

Dear Mr. Shirey:

This is in response to your formal complaint alleging that the Indiana Department of Homeland Security ("Department") violated the Access to Public Records Act by failing to respond to your request for an acknowledgement that the Department had received your January 6 complaints, and failure to respond to your request for a copy of administrative procedures for validating and resolving complaint issues. I find that the Department had no obligation to issue an acknowledgment or to respond to this part of your request, but the Department was required to respond to your request for policies in a timely manner.

BACKGROUND

You sent the Department a letter dated February 7, 2006 requesting acknowledgment that complaints were filed by you on January 6 and their current status. You also requested a copy of the administrative procedures the Department uses for validating and resolving complaints.

You claim in your formal complaint that the Department failed to respond to your requests. I sent a copy of your complaint to the Department. Department Attorney Mara Snyder provided me with a copy of the February 23 letter to you in which the Department discusses the merits of your complaints. In addition, the Department explained in this letter that it does not maintain any written administrative procedures for handling complaints, but the Department described the process that the Department utilizes.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). A public agency is not required to compile or create a record to satisfy a person’s request for information. Rather, the APRA requires that a public agency make available its current records.

With respect for your request that the Department acknowledge receipt of your complaint and tell you the current status, the Department was not required to respond to this request, because it was not a clear request for a record. Rather, you requested information concerning the current status of the complaint and that the Department take some action to acknowledge receipt. For this part of your request, the Department was not required to respond to your request for action as if it were a request for a record. Moreover, the Department was not required to create a record, an acknowledgment letter, under the Access to Public Records Act. This part of your formal complaint is without merit.

Your February 7 letter clearly stated that you sought a copy of any administrative procedures used by the Department to process complaints. The Department should have issued a response within 24 hours or seven days, depending upon how you sent your request. If the Department failed to issue a response within the proper timeframes, it violated the Access to Public Records Act. The February 23 letter to you states that no record exists that satisfies your request for administrative procedures. This was a proper response of the Department, and it was not required to create this record either. However, the Department should have responded timely to let you know that no record existed. The Department helpfully provided in letter form the answer to your question.

CONCLUSION

If the Indiana Department of Homeland Security failed to timely respond to your February 7 request for administrative procedures, the Department violated the Access to Public Records Act. Otherwise, your complaint cannot be sustained with respect to any other allegation.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mara Snyder