

May 23, 2007

Robert N. Malone
501 Walnut Court
Centerville, IN 47330

Re: Formal Complaint 07-FC-106; Alleged Violation of the Access to Public Records Act by the Centerville Center Township Public Library

Dear Mr. Malone:

This is in response to your formal complaint alleging that the Centerville Center Township Public Library ("Library") violated the Access to Public Records Act by failing to provide records in a timely manner. I find that the Library intended to provide the records on March 30, 2007 and did provide the records on that date, but because the Library's response letter was ambiguous, you were not aware that the records were available.

BACKGROUND

You claim that your request for records had not been fulfilled by April 19, the date you sent your complaint to the Public Access Counselor. You had submitted a written request for documentation of when and where gift and memorial fund monies have been repaid to. This request was submitted by e-mail on March 13.

The Library sent you a March 14 letter. The first paragraph of the letter states that "you will be called when the items requested are available to be copied at \$.10 per page. There are several requests from other citizens ahead of yours, but your request will be completed as soon as possible." Next appears the signature line of Marie Bunch, Director of the Library. Below the signature line appears the following: "In response: Documentation that gift funds were repaid will be available for your inspection by Friday, March 30, 2007. If they are available at an early time, Kim Smith will notify you by phone." On your copy of this letter, you wrote "Still no response."

I sent a copy of your complaint to Ms. Bunch. Ms. Bunch stated that the records have been available at the Library since March 30, 2007, as promised in the March 14 letter to you.

The letter stated that Kim Smith would call you only if the material was ready earlier than March 30. It was not; hence, Ms. Bunch believed that you had been notified in the March 14 letter to come retrieve the records on March 30 if you heard nothing further from the Library.

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. Ind. Code 5-14-3-3(a). If a public agency receives a request by U.S. Mail or facsimile, the agency is required to respond within seven days, or the request is deemed denied. IC 5-14-3-9(b). Records should be produced within a reasonable period of time.

It is often the case that a public agency will not be able to predict during the response time exactly when the records can be compiled. If a public agency responds that the records will be compiled and provided, the public agency may give a date certain, or state that the request will be reviewed and the records compiled without specifying when the records will be available. In the latter case, the public agency should notify the requester when the records have become available and make arrangements for picking them up. A requester should not have to initiate further contact with the agency to learn that the records are available; the agency is in a superior position to know that it has completed the task of identifying, compiling, and copying the records.

Here, the Library believed it had set a date certain, March 30, for you to come to the Library to retrieve the copies. However, the first part of the letter stated that you would be called when the records were available. I have spoken with the Library and recommended that the Library not send an ambiguous response letter such as the one you received. The Library was receptive to this recommendation. In any case, your records may be picked up at the Library presently.

CONCLUSION

For the foregoing reasons, I find that the Centerville Center Township Public Library's response letter was ambiguous, and the Library should have notified you that the copies were available at the Library during business hours.

Sincerely,

Karen Davis
Public Access Counselor

cc: Marie Bunch