

May 31, 2007

Marlan C. Bonds
#953219
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: Formal Complaint 07-FC-118; Alleged Violation of the Access to Public Records Act by the Elkhart County Board of Commissioners

Dear Mr. Bonds:

This is in response to your formal complaint alleging that the Elkhart County Board of Commissioners (“Commissioners”) violated the Access to Public Records Act by failing to respond to your request for records. I find that the Commissioners may not have responded because the person you named in your request was no longer a Commissioner. If the Commissioners failed to respond to a request they received, the Commissioners violated the Access to Public Records Act. The Commissioners have provided a copy of the record once they became aware of your complaint.

BACKGROUND

You complain that the Commissioners did not respond to your request for records revealing a contract between the County and Oaklawn Community Mental Health Center. The Commissioners responded to your complaint by a letter dated May 21 from Mr. Gordon Lord, Elkhart County attorney. This response was also sent to you, and enclosed a copy of the contract between the County and Oaklawn Community Mental Health Center. Mr. Lord explain that your request to Phil Stiver was confusing because he had retired at the end of 2006 as Commissioner. Mr. Lord continued that the only record responsive to your request was a one-page contract that he enclosed. He also explained in detail where other similar records may be concerning the relationship of the community mental health centers to government.

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 or by telephone, 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).

It appears that the Commissioners may have received the request but did not understand they were obligated to respond although the named Commissioner was no longer in office. This does not excuse non-response, and assuming that the request was delivered to the Commissioners, the failure to respond within seven days would be a violation of the Access to Public Records Act.

The Commissioners have now provided responsive records.

CONCLUSION

For the foregoing reasons, I find that if the Elkhart County Commissioners received your request for records, the Commissioners violated the Access to Public Records Act if they failed to timely respond.

Sincerely,

Karen Davis
Public Access Counselor

cc: Gordon Lord