

July 18, 2007

Diana Elliott
4971 East CR 400 North
Brownsville, Indiana 47325

Re: Formal Complaint 07-FC-167 and 07-FC-169; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Services

Dear Ms. Elliott:

This is in response to your formal complaints alleging the Indiana Department of Child Services (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by failing to respond to your request for records. A copy of the Department’s response to your complaints is enclosed for your reference. Because the two complaints you filed allege denial by the same public agency and because the same response was sent by the agency in reference to both complaints, I have combined the complaints and will address both in this opinion. The Department provides evidence it did respond to your requests. While the responses were untimely, I find that the Department did not otherwise violate APRA.

BACKGROUND

Your complaints alleges that you sought records from the Department’s Wayne County and Union County offices related to preliminary reports and investigatory records pertaining to you or containing your name. After your initial requests on April 26, 2007, you were given information by the Department regarding the proper form and authority by which to request the records. You then requested access to these records on May 15, 2007.

In response to your complaints, the Department provided a detailed timeline of events related to your requests. In response to your April 26 request under the Freedom of Information Act and the Privacy Act (which apply to federal records), the Department sent you a letter indicating the procedure for requesting the records. The Department also notified you it would not be able to release most of the records because they are confidential by statute as part of the court record in a juvenile proceeding. The Department indicated you would need to petition the juvenile court to have the records released, under IC 31-39-1-2 and IC 31-39-2. The Department indicates you did not follow up on this request after receiving the response.

The next correspondence the Department received from you was a request for the same documents under the Access to Public Records Act. The Department advised you the records are not subject to the APRA. The Department later realized a misreading of the APRA and discovered the records are public records but confidential to most people who would request access. The Department indicates it failed to respond to your May 15 request because of its error, not realizing it was required to respond after having responded to your April 26 request.

The records you request are required to be expunged after one year by the Department under IC 31-3-8-12. Because of potential impending litigation, though, the Department retained and still maintains the records to which you request access. In a July 5 letter, the Department has responded to your request with an indication it is preparing the approximately 800 to 1,000 documents for your inspection.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2. A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

Your complaint alleges the Department did not respond to your request. The Department provided evidence it did on July 5, 2007 respond to your request and is in the process of preparing the documents for inspection or copying. While untimely under the statute, the Department did substantively respond to your request and is currently working to prepare the records for inspection or copying.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Child Services’s response was not timely under the Access to Public Records Act. I further find that the response does not otherwise violate the APRA.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Mary Lynn Lineback, Department of Child Services
Jennifer Pyclik, Department of Child Services