

September 7, 2004

Mr. Eric D. Smith, #112675
Indiana Department of Correction
Maximum Control Facility
P.O. Box 557
Westville, IN 46391-0557

Re: Formal Complaint 04-FC-132; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction, Maximum Control Facility

Dear Mr. Smith:

This is in response to your formal complaint alleging that the Indiana Department of Correction Maximum Control Facility ("Facility") violated the Access to Public Records Act ("APRA"), I.C. §5-14-3, by denying you access to public records. Specifically, you allege that the Facility denied you access to records regarding prisoner meals and monies paid for those meals. For the following reasons, I find that the Facility's failure to timely respond to your request for access to public records is a violation of the Access to Public Records Act.

BACKGROUND

You allege that on July 14, 2004, you submitted a second level grievance, with an attached request for public records, to the superintendent of the Maximum Control Facility. According to your complaint, your request sought records of the funds received for prisoner meals, records showing that the money was actually spent on prisoner meals, and records of an inventory list of all food purchased. Having failed to receive a response, you submitted a formal complaint, which was received by this office on August 5, 2004.

I forwarded a copy of your complaint to the Maximum Control Facility. Ms. Pam Pattison, Director of the Office of Media and Public Relations of the Indiana Department of Correction, responded on behalf of the Maximum Control Facility. I have enclosed a copy of her response for your reference. In that response, Mr. Pattison verifies that your request was received during Step 2 of the grievance process. She states that the grievance process is not the

means in which to ask for public records; there is a separate process to request public records. Furthermore, Ms. Pattison states that you asked for no specific records to be copied or provided to you.

ANALYSIS

Timeliness of Response

The Maximum Control Facility is a public agency for the purposes of the Access to Public Records Act. I.C. §5-14-3-2. Accordingly, any person may inspect and copy the public records during the regular business hours, unless the records are excepted from disclosure as confidential or otherwise nondisclosable under I.C. §5-14-3-4. I.C. §5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The Access to Public Records Act requires a response either within twenty-four (24) hours or seven (7) days, depending on how the request was made. If a person making the request is physically present in the office or makes the request by phone, the public agency must respond within twenty-four (24) hours of receiving the request. If, however, a person makes a request by mail or facsimile, the public agency must respond within seven (7) days of receiving the request. What is contemplated in terms of a response to a request for access to public records is a communication with the requestor.

Your complaint does not state whether your request for records was submitted to the Facility in person or by mail. However, both your complaint and Ms. Pattison's response to your complaint imply that you received no response from the Facility as of August 5, the day your complaint was filed, which was more than seven (7) days after your request. Seven (7) days is the longest period in which an agency has to respond to a request for access to public records. Therefore, I find that the Facility failed to respond in a timely manner, and that its failure to respond is a violation of the Access to Public records Act.

Ms. Pattison states that the grievance process is not the means by which to ask for public records and that you did not pursue the proper public record request process. The fact that your request for access to public records was submitted "during the grievance process" does not excuse the Facility's obligation to respond to your request. If the Facility requires a public record request be on a particular form, and the request has not been submitted on that form, the Facility is required to contact the requestor within the appropriate time frame and advise them of that fact.

Reasonable Particularity

Ms. Pattison also states that "you ask for no specific records to be copied and provided to you." While we do not have a copy of your original request, your complaint clearly states what records you sought. When a public records request is made, the requestor must state his or her request with reasonable particularity. I.C. §5-14-3-3(a)(1). "There is no Indiana case law defining 'reasonable particularity,' but a Florida court held that a public agency has the affirmative duty under their public records access statute to notify the requestor if more information is needed in order to respond to the request." *Opinion of the Public Access Counselor 01-FC-40*, citing *Salvador v. City of Stuart, No. 91-812 CA (Fla. 19th Cir. Ct.,*

December 17, 1991.) Although I have no way of knowing whether the original request was framed as specifically as your complaint, if it was, the request was stated with reasonable particularity even though it was submitted as part of the grievance process. If the request was unclear, the Facility should have contacted you for clarification.

CONCLUSION

For the foregoing reasons, I find that the failure of the Maximum Control Facility to timely respond to your records request is a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Pam Pattison: w/o enclosures