

September 20, 2004

Mr. Bobby L. Peck, #865349
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: Formal Complaint 04-FC-149; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Peck:

This is in response to your formal complaint alleging that the Indiana State Prison ("Prison") violated the Access to Public Records Act by denying you access to public records. For the following reasons, I find that the Indiana State Prison violated the Access to Public Records Act.

BACKGROUND

On August 5, 2004, you submitted to the Indiana State Prison a written request for access to public records. Specifically, you requested from Cecil Davis, Superintendent of the Prison, a roster of all the Prison's personnel. Having failed to receive a response, you filed a formal complaint, which was received by this office on August 20, 2004. I forwarded a copy of your complaint to the Prison. Mr. Barry Nothstine, Public Information Officer for the Indiana State Prison, replied. I have enclosed a copy of his response for your reference.

In his response, Mr. Nothstine states that your request for information was received by the Superintendent's Office on August 10, 2004. Your request was "processed and forwarded" for response to Mr. Nothstine's office on August 13, 2004. Mr. Nothstine forwarded a written response to your request to you on August 20, 2004.

ANALYSIS

The Indiana State Prison is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the Access to Public Records Act has a specified period of time to respond to the request. I.C. §5-14-3-9(b). When a public record

request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days from the date the public agency receives the request. I.C. §5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b). A timely response to the request need not include production of the requested documents or expressly decline to produce documents responsive to the request. Indeed, a public agency may comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production of the requested document.

In his response, Mr. Nothstine acknowledges that the Superintendent's Office received the request on August 10, 2004, but states that since he did not receive the request until August 13, 2004, his August 20, 2004 response was made within the required seven (7) day time period. Mr. Nothstine's response indicates that he believes that the deadline for a response to a request for information begins when the person or office that has been designated to respond to a request receives that request. Certainly, an agency may designate a particular office or person to respond to requests for information that it receives. However, the deadline for that response begins on the date that the request was received by the agency itself, not by the particular office or person responsible for the response. Therefore, the response from the Prison was due within seven (7) days of the date the Prison received it, not seven (7) days from the date Mr. Nothstine received it.

Your complaint does not indicate whether your request was submitted to the Prison in person or by mail. Due to circumstances of this situation, I will assume that your request was sent to the Prison via mail. To be timely, a response from the Prison should have been sent to you by August 17, 2004. Because the Prison's response was sent on August 20, 2004, I find that the Prison failed to respond to your request for information within seven (7) days of its receipt of your request, and that the failure to so respond is a violation of the Access to Public Records Act.

I note that Mr. Nothstine's August 20, 2004 response to you indicates that he has taken steps to make the information you requested available to you, and has advised you of the costs associated with obtaining copies.

CONCLUSION

For the foregoing reasons, I find that the Indiana State Prison violated the Access to Public Records Act by failing to respond to your request for access to public records within the timeframe set out in I.C. §5-14-3-9(b).

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Barry Nothstine