

November 18, 2004

Mr. Larry E. Kuhn
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838-2222

Re: Formal Complaint 04-FC-197; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction; PEN Products

Dear Mr. Kuhn:

This is in response to your formal complaint alleging that the Indiana Department of Correction, PEN Products (“PEN”)¹ violated the Access to Public Records Act (“APRA”) by failing to respond to your request for a record. I find that the Indiana Department of Correction, PEN Products did not timely respond to your request for a record and consequently violated the Access to Public Records Act.

BACKGROUND

On October 4, 2004 you sent your request for the “total dollar amount of funds withheld from offender wages of PEN Products and forwarded to the Victims of Violent Crime Fund for the period of July 1, 2003 through July 1, 2004.” On the date that you filed your complaint, October 18, you alleged that PEN had not replied to you.

I sent a copy of your complaint to PEN Products. Becky Gillam’s response is enclosed with this advisory opinion for your reference. Ms. Gillam acknowledges the tardy response to your record request, although I note that she is granting access to the document upon your payment of a copying fee of \$.10 per page. PEN’s response is dated October 18, 2004.

¹ PEN stands for “Prison Enterprises Network,” and PEN Products is a division of the Indiana Department of Correction.

ANALYSIS

A person may inspect and copy the public records of a public agency during the regular business hours of the agency, unless an exemption applies to the record. IC 5-14-3-3(a). Your complaint was prompted by your failure to receive any response from the agency within the timeframe provided in the APRA. The agency receiving a request for records by mail has denied the request if it has not responded within seven (7) days of receipt. IC 5-14-3-9(b). PEN states that it received your request on October 5; therefore, it was required to respond to you no later than October 12. Because PEN did not timely respond to your request, it violated the Access to Public Records Act. I note, however, that it is making the record available to you upon receipt of your payment of the copying fee. PEN is entitled to charge a reasonable copying fee, which for a state agency is \$.10 per page. IC 5-14-3-8(c).

CONCLUSION

For the foregoing reasons, I find that the Department of Correction, PEN Products violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Becky Gillam