

July 19, 2006

Sent Via Facsimile

Mr. Lynn H. Molzan
Woollen Molzan & Partners, Inc.
600 Kentucky Avenue, Suite 101
Indianapolis, IN 46225

Re: Formal Complaint 06-FC-110; Alleged Violation of the Access to Public Records Act by the Indianapolis-Marion County Public Library

Dear Mr. Molzan:

This is in response to your formal complaint alleging that the Indianapolis-Marion County Public Library (“Library”) violated the Access to Public Records Act by failing to either produce the records or state the reasons for denial within seven days. I find that you do not have standing to file a formal complaint, but I am issuing an [informal inquiry response](#).

BACKGROUND

You filed a formal complaint in your name and on behalf of the company with which you are affiliated, Woollen Molzan & Partners, Inc. [hereinafter, “WMP”] A Robert R. Elder signed the complaint form. You told me that Mr. Elder is associated with the law firm Stuart & Branigan. In your formal complaint, you state that you, the Complainant, requested records of the Library. In your enclosures are letters to the Library from Nicholas Nizamoff and John Stuckey of the Stuart & Branigan law firm. In the May 8 letter requesting the documents at issue in your complaint, Mr. Nizamoff states that he is requesting the records; there is nothing indicating on whose behalf he is requesting records. Similarly, the May 26 letter from Mr. Stuckey omits any reference to a client or the WMP firm. In the May 26 letter, Mr. Stuckey states that “If [the records] are not in hand by the close of business on June 8, 2006, I will file a complaint with the public access counselor...”

I sent a copy of your complaint to the Library. The Library, through its counsel Kevin Quinn of Tabbert Hahn Earnest & Weddle, LLP, challenges your right to file a formal complaint, because you did not request records.

ANALYSIS

In 1999, the Indiana General Assembly enacted legislation creating the Office of the Public Access Counselor and a formal complaint process. The Public Access Counselor may receive and respond to informal inquiries and issue advisory opinions in response to formal complaints. IC 5-14-4-10(5) and (6). An informal inquiry may be made by the public or public agencies by telephone, in writing, by facsimile, in person, or electronic mail. IC 5-14-4-10(5). The informal inquiry process, therefore, is available to any person who has questions or concerns about the state's public access laws.

In contrast, in the formal complaint process, the grounds for filing a formal complaint and receiving a formal advisory opinion in the context of the Access to Public Records Act are limited to when any person or public agency is denied the right to inspect or copy records under Indiana Code 5-14-3 or any other right conferred by the Access to Public Records Act or any other statute or rule governing access to public records. IC 5-14-5-6.

The threshold issue raised by the Library's response to your formal complaint is whether you in fact have standing to file a formal complaint in this matter since you did not submit the request for access to public records. In fact, the Stuart & Branigan law firm submitted the request for records on May 8. Although Stuart & Branigan may have submitted the request on your behalf, neither the request and correspondence nor your complaint asserts that. This set of facts is distinguished from those in *Opinion of the Public Access Counselor 01-FC-23*, where the public access counselor found standing was met where one individual affiliated with an organization may file a formal complaint under the APRA on behalf of the organization even though the records request was submitted by the same organization but by a different person affiliated with that organization. There is nothing in the formal complaint or the documentation accompanying the complaint to show that your company was the requester; hence, you cannot assert that you were denied any records. I am not persuaded that the signature of Mr. Elder supplies the standing, because Mr. Elder's signature does not note his affiliation with either your company or Stuart & Branigan.

For the above reasons, you do not have grounds to file a formal complaint with this Office. You are, however, entitled to receive an informal response to your concerns and that response is enclosed.¹

CONCLUSION

For the foregoing reasons, it is my opinion that neither you nor Woollen Molzan & Partners, Inc. have grounds to file a formal complaint with this Office alleging violations of the Access to Public Records Act because you allege that you were denied records, although you did

¹ For those who are viewing this opinion electronically, [click here](#) to access the text of the informal written response.

not request records of the Library. You are entitled to and will receive an informal inquiry response.

Sincerely,

Karen Davis
Public Access Counselor

cc: Kevin M. Quinn