

August 22, 2006

Darrell Williams
#26008-044
United States Penitentiary
P.O. Box 1000
Marion, IL 62959

Re: Formal Complaint 06-FC-126; Alleged Violation of the Access to Public Records Act by the Indiana Disciplinary Commission

Dear Mr. Williams:

This is in response to your formal complaint alleging that the Indiana Disciplinary Commission (“Commission”) violated the Access to Public Records Act by failing to respond to your request for records. I find that there was no violation of the Access to Public Records Act by the Commission.

BACKGROUND

You mailed your formal complaint to the Office of the Public Access Counselor nine days after sending the Commission your request for records. You sought records regarding the Commission’s investigation of an attorney with respect to a grievance you filed with the Commission. You claim that the Commission has failed to respond.

I sent a copy of your complaint to the Commission. The Executive Secretary of the Commission Donald R. Lundberg wrote in response. I have enclosed a copy of his response with this advisory opinion. Mr. Lundberg enclosed your original request with the file-marked date of July 17, evidencing that the Commission received your request on July 17. Mr. Lundberg sent a response to your request the following day, July 18. The Commission denied your request for records regarding the grievance filed against the attorney, citing Admission and Discipline Rule 23, and the Access to Public Records Act, Ind. Code 5-14-3-4(a)(8). Mr. Lundberg stated that his response was timely and consistent with the rules of the Indiana Supreme Court.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days from the date of receipt, or the request is deemed denied. IC 5-14-3-9(b). If a request is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny a written request for a record if the denial states the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The Commission received your request for records on July 17, and responded well within seven days. Therefore, your request was not deemed denied, and the Commission’s response was timely under the Access to Public Records Act.

Under the Access to Public Records Act, a public agency may not disclose records that are declared confidential by or under rules adopted by the supreme court of Indiana. IC 5-14-3-4(a)(8). This was the denial reason cited by Mr. Lundberg in his response, which you likely received after you filed your complaint. Mr. Lundberg further cited the Indiana Supreme Court rule that declares confidential records concerning an investigation of a complaint by the Commission, Indiana Admission and Discipline Rule 23. That rule states, in pertinent part, “Investigative reports and other work product of the Executive Secretary or his or her agents shall be confidential and not open to public inspection.” Hence, the denial of these records comports with the Access to Public Records Act.

Your complaint against the Commission is without foundation. I recommend that in the future, you allow at least 14 days after placing your request for a record in the mail before considering filing a complaint with the Office of the Public Access Counselor. It appears, based on this and previous complaints, that the mail delivery between your facility and the mail’s destination is rather lengthy. To the extent that your complaint would be based on a public agency’s failure to respond, you would not be able to sustain your allegation of denial when you file a complaint a mere nine days after sending your request. Because even a three day mailing time both ways would account for six days of mail plus seven days to respond, I would not consider a future complaint ripe unless you send it no sooner than 13 days after you mailed your record request.

CONCLUSION

For the foregoing reasons, I find that the Indiana Disciplinary Commission did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Donald R. Lundberg