

November 22, 2006

SirLando Logan
#973822
Westville Control Unit
County Road 1100
P.O. Box 557
Westville, IN 46391-0557

Re: Formal Complaint 06-FC-185; Alleged Violation of the Access to Public Records Act by the Westville Correctional Facility

Dear Mr. Logan:

This is in response to your formal complaint alleging that the Westville Correctional Facility (Facility”) violated the Access to Public Records Act by failing to respond to your requests for records. I find that the Facility did not receive your requests. I also find that the Facility violated the Access to Public Records Act in denying your request for personnel file information.

BACKGROUND

You complained in two separate complaints that the Facility has not responded to your requests for records. I have consolidated your complaints in this advisory opinion. In the first request, you sought information concerning the race, ethnicity, national origin, and ancestry of incarcerated persons and staff members employed at the Facility. For your second request, you sought information concerning Correctional Officer James Shreeves, including his name, job title, job description, business address, business telephone number, compensation, education and training background, previous work experience, dates of first and last employment, and information relating to the status of formal charges and the factual basis for a final disciplinary action.

I sent a copy of your complaint to the Facility. The Facility’s response is enclosed for your reference. Ms. Elaine Zschoche, Public Information Officer for the Facility, wrote that the

Facility did not respond because it did not receive either request. She checked with the mailroom personnel who are aware that anything addressed to the Facility Public Information Officer would come to her even if her name was not on the mail. Your request was sent to the attention of the Facility Public Information Officer.

Once aware of your requests, the Facility has now responded. Ms. Zschoche enclosed the responses that were sent to you dated November 8. In her first response, Ms. Zschoche sent the breakdown concerning ethnicity that you requested. As to your second request for personnel file information regarding Correctional Officer Shreves, Ms. Zschoche denied your request, citing Indiana Code 5-14-3-4(b)(10) for administrative or technical information that would jeopardize a record keeping or security system. She explained that knowledge of personal information regarding correctional officers within the offender population would make the correctional facility unsafe for staff.

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, or the request is deemed denied. IC 5-14-3-9(b). If a public agency has not received a request for a record, it is obvious that the public agency cannot respond. It is my opinion that the Facility did not violate the Access to Public Records Act where it did not receive your request for the record.

If a request initially 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 the request if the denial is in writing or by facsimile, and the denial includes 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).

Having received a copy of your requests by way of the formal complaints that you filed, the Facility responded by giving you some of the records, but denying your request for certain personnel file information regarding the correctional officer. Although you did not raise any issue concerning the denial because the Facility had not issued the denial when you filed your complaint, I offer the following guidance with respect to the denial of the personnel file information.

There are several exemptions contained in section 4 of the Access to Public Records Act. The exemption cited by the Facility is for “administrative or technical information that would jeopardize a record keeping or security system.” IC 5-14-3-4(b)(10). The Facility has stated that an offender’s knowledge of personal information about correctional staff would jeopardize safety at the Facility. On that basis and citing to IC 5-14-3-4(b)(10), the Facility opted to not disclose the personnel file information you requested.

Personnel files of public employees and files of applicants for public employment may be exempted from disclosure at the discretion of the public agency, except for:

(A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) Information relating to the status of any formal charges against the employee; and

(C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

IC 5-14-3-4(b)(8). The above information about public employees is required to be disclosed.

In a previous opinion concerning this precise issue of disclosure by the Department of Correction of personnel file information listed in IC 5-14-3-4(b)(8), I wrote to say that information that is required to be disclosed under IC 5-14-3-4(b)(8) is not exempt under IC 5-14-3-4(b)(10), because the information is harmless on its face and may not be withheld because of speculated misuse of the information. *Opinion of the Public Access Counselor 05-FC-133*.

In addition to the reasoning in that opinion, I would add that nothing contained in subsection 4(b) of the APRA shall affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency. IC 5-14-3-4(c). In my opinion, the information that is *required* to be disclosed in IC 5-14-3-4(b)(8) is such a statute that is not countermanded by IC 5-14-3-4(b)(10). Accordingly, the Facility may not rely on IC 5-14-3-4(b)(10) to deny the personnel file information. Unless another law makes this information of the Department of Correction *confidential*, the information should be disclosed to you.

CONCLUSION

For the foregoing reasons, I find that the Westville Correctional Facility did not violate the Access to Public Records Act when it failed to respond to a request that it did not receive. However, it is my opinion that the Facility may not deny the personnel file information that is required to be disclosed under the Access to Public Records Act unless the information is confidential under another applicable law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Elaine Zschoche