

December 6, 2006

Christine Brown

*Re: Formal Complaint 06-FC-194; Alleged Violation of the Access to Public Records Act by the Warrick County Office, Department of Child Services*

Dear Ms. Brown:

This is in response to your formal complaint alleging that the Warrick County Office, Department of Child Services (“Department”) violated the Access to Public Records Act (“APRA”) by refusing to give you public records relating to an investigation of allegations of child abuse or neglect. I find that the Department denied you a record in violation of the Access to Public Records Act.

#### BACKGROUND

You have requested copies of the child abuse and neglect investigative file from the Department several times over the last several months, most recently on October 3, 2006. Specifically, you have been attempting to get forms 310 and 311 from the Department, as well as other material. You believe that you are entitled to those records as the subject of the investigation. You received a denial letter dated October 12, 2006 from the Department’s legal counsel, Mark Phillips. Mr. Phillips cited Indiana Code 31-33-18-1 which deals with confidentiality of reports concerning allegations of child abuse and neglect. Mr. Phillips advised you that the Department could not release the records without a court order.

You filed your formal complaint with the Office of the Public Access Counselor on November 6. I sent a copy of your complaint to the Department of Child Services. Mr. John Wood, Deputy General Counsel for the Department responded, a copy of which is enclosed for your reference. He acknowledged that the Department erred in denying you the record, where IC 31-33-18-2 provides that you would be entitled to copies of the file, subject to redaction of specified personally identifiable information as provided in IC 31-33-18-2(14)(A) and (B). He expected that by December 1 the file should be ready for inspection and copying.

## 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 request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

- (1) the denial is in writing or by facsimile;
- (2) and the denial includes:
  - (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
  - (B) the name and the title or position of the person responsible for the denial.

Under IC 5-14-3-4(a), certain public records are excepted from section 3 of the APRA and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. Records that are declared confidential by state statute may not be disclosed. IC 5-14-3-4(a)(1).

Under IC 31-33-18-1(a), certain records concerning reports of abuse or neglect are confidential:

- (1) Reports made under [article 33] (or IC 31-6-11 before its repeal).
- (2) Any other information obtained, reports written, or photographs taken concerning the reports in the possession of:
  - (A) the division of family resources;
  - (B) the county office; or
  - (C) the department.

However, the reports and other material described in IC 31-33-18-1 shall be made available to a person about whom a report has been made, with protection for the identity of:

- (A) any person reporting known or suspected child abuse or neglect; and
- (B) any other person if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of the person. IC 31-33-18-2(14).

First, I note that the Department fulfilled the formal requirement for denial of the records when it issued in writing a statement of the specific exemption that the Department believed authorized withholding of the record and the name and title of the person responsible for the denial. However, the Department should not have denied the records at all, because they were required to be disclosed to you.

Although the records you sought are confidential under state statute, a different state statute specifically *requires* that you have access to the records. Under IC 5-14-3-4(a), where access to records is specifically required by state statute, the records may not be withheld even if otherwise they are declared confidential by state statute. Therefore, the Department violated the Access to Public Records Act when it denied you those records under IC 5-14-3-4(a)(1).

The Department acknowledges that the denial was improper in its complaint response. The Department should have contacted you by now to arrange for you to have a copy of the records, redacted for information that you are *not* entitled to under IC 31-33-18-2(A) and (B). Although the Department has now made the records available to you, that does not alter my opinion that the Department violated the APRA when it initially denied you those records.

#### CONCLUSION

For the foregoing reasons, I find that the Warrick County Office, Department of Child Services violated the Access to Public Records Act when it initially denied you records that a state statute provides you access to.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John Wood  
Judith Harper