

December 18, 2006

Eric D. Smith
#112675
Indiana State Prison
Michigan City, IN 46361

Re: Formal Complaint 06-FC-202; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Smith:

This is in response to your formal complaint alleging that the Indiana Department of Correction (“Department”) violated the Access to Public Records Act by failing to respond to your requests for records. I find that if the Department received your requests and failed to respond, the Department violated the Access to Public Records Act.

BACKGROUND

You allege that you sent requests for records to the Department on October 30, 2006. You filed your formal complaint on November 17, 2006, claiming that you have received no response from the Department. Your first request was for 1) what it takes or is required to become a superintendent for a prison operated by the Indiana Department of Correction, and 2) documents showing titles of staff positions in the administrative field for a prison operated by the Indiana Department of Correction, and the salary for each staff position. In your second request, you sought a printout of all persons convicted of arson as a class B felony from the dates of March 1, 1991 to March 1, 2006, who went to a jury trial, and a list of their sentence, for individuals in the Indiana Department of Correction.

I sent a copy of your formal complaint to the Department. I have not received any response from the Department.

ANALYSIS

You requested priority status for your complaints, but have alleged none of the circumstances for which priority may be granted. *See* 62 IAC 1-1-3. Therefore, I have issued this opinion within 30 days from the date your complaint was filed.

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). An agency is not required to create a record or compile data to fulfill a request for a record. Hence, if the public agency has no responsive records, the public agency should so indicate in a response to the person requesting the record.

Having received no response to your complaint from the Department, I have no information from which to conclude that the Department met the requirements of the APRA or not. From the copies of your requests that you provided, it appears that you omitted the name of the public agency, Department of Correction, from the address. I have no idea whether this omission would have prevented delivery of your request to the Department. If the Department did not receive your request, no response would have been required. If the Department did receive your request and failed to respond within seven days of receipt, the Department violated the Access to Public Records Act.

In addition, the Department was under no obligation to compile the information you requested concerning persons convicted of arson and their sentences. Only if the Department already maintains this record would the Department be obligated to disclose it to you.

In addition, information regarding job titles and salaries of public employees is required to be disclosed from a personnel file. IC 5-14-3-4(b)(8). However, the public agency may require that the requester specify the name of the public employee whose job title is requested. *See* IC 5-14-3-4(b)(8). Therefore, if the Department maintains the information concerning job titles and salaries of “staff positions in the administrative field,” the Department could require that you particularize your request by employee name.

CONCLUSION

For the foregoing reasons, I find that if the Department received your request for a record and failed to respond, the Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Robert Bugher