

December 18, 2006

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

Re: Formal Complaint 06-FC-204; Alleged Violation of the Access to Public Records Act by the Indiana Attorney General

Dear Mr. Smith:

This is in response to your formal complaint alleging that Indiana Attorney General (“Attorney General”) violated the Access to Public Records Act by failing to respond to your request for records. I find that the Attorney General was required to respond to your request within seven days.

BACKGROUND

You allege that you sent a request for records to the Attorney General on October 30, 2006. You filed your formal complaint on November 17, 2006, claiming that you have received no response from the Attorney General. Your 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.

I sent a copy of your complaint to the Attorney General. The Attorney General sent me a copy of a letter sent to you on November 27, explaining that through an oversight in which a new employee had referred your request to the Department of Correction without entering the request in the Attorney General’s tracking system for response, the Attorney General failed to issue the response. If the Attorney General had responded, the response would have explained that the Attorney General does not maintain the records you seek.

ANALYSIS

You requested priority status for your complaint, 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 retrieve a record from another public agency 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.

Because the Attorney General was required to respond to your request within seven days of receipt, even if the response is to state that the Attorney General has no records that meet your request, the Attorney General violated the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the Attorney General should have responded to your request for records within seven days of receipt, and therefore violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan Gard