

February 2, 2006

Sent Via Facsimile

Scott J. Cooper
P.O. Box 22327
Indianapolis, IN 46222

Re: Formal Complaint 06-FC-5; Alleged Violation of the Access to Public Records Act by the Department of Child Services

Dear Mr. Cooper:

This is in response to your formal complaint alleging that the Department of Child Services (“DCS”) violated the Access to Public Records Act (“APRA”) by failing to produce e-mail records timely.

BACKGROUND

In your formal complaint, filed on January 3, 2006, you allege that DCS has not timely produced e-mail records that you first requested on December 5, 2005. You requested e-mail communications sent to and from Child Worker Diana Williams for the period of October 1, 2005 through January 1, 2006 (or whenever Ms. Williams’ CPS report was delivered). You state that you were informed by Rhonda Allen that the e-mails had been retrieved and were being reviewed by the “legal team.” You doubt this could be the case because as of January 3, 2006, counsel for FSSA John Wood had not received the e-mails. You state your belief that DCS has a pattern and practice of producing public records untimely.

I sent a copy of your complaint to Mr. Wood. He responded by letter, a copy of which is enclosed for your reference. Mr. Wood provided documentation of your request and other e-mail communications concerning your request. He stated that the first request you sent was dated December 8, and that you requested all e-mail of Ms. Williams without specifying a time limitation. The gist of Mr. Wood’s response is that DCS promptly set about retrieving the e-mails, which included coordination with the Office of Technology. However, through a set of

circumstances, DCS employees did not understand that your request was not limited to those involving only you or your case.

Hence, when Mr. Wood was sent the one e-mail that was so limited, he reviewed it and approved its disclosure quickly, on December 28. He became aware that you had requested all e-mails for the three month period after receiving the copy of your formal complaint. He then asked DCS for a copy of your December 8 e-mail request, which had been misaddressed to him.

Mr. Wood indicated that your request for three months of Ms. Williams' e-mails is being retrieved, and he promised to do what he could to expedite the request.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A request must identify the record requested with reasonable particularity. IC 5-14-3-3(a)(1). If an agency receives a request for records via e-mail, the Office of the Public Access Counselor has advised that the agency should issue a response within seven calendar days of receiving the request. *See* IC 5-14-3-9(b). There are no strict requirements within the APRA for when an agency must produce a record. Therefore, an agency should produce the records within a reasonable period of time. The determination of whether production time is reasonable depends upon all the facts and circumstances.

I would advise you that producing e-mails, even recent ones, will generally involve a significant amount of agency resources. This is true in particular because each e-mail must be examined to determine whether it is disclosable or exempt from disclosure. Depending upon how many e-mails are identified as responsive, the time within which the agency can do this can be quite lengthy. Because the agency has not completed the task of identifying the e-mails, I do not know how many e-mails are responsive. Therefore, it is difficult for me to state definitively my opinion with regard to timeliness of production. However, I would observe that, at least at the time your complaint was filed, and considering the broad scope of your request, I do not believe nearly one month is unreasonable for the task.

However, it is clear that the task of examining and producing the e-mails continues. In addition, the agency would likely have completed the production sooner had a series of miscommunications not occurred. However, I do not discern any intent to not comply, or not comply timely, with the APRA. I would also remind you that a public agency shall regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). While this provision does not mean that an agency may place records requests in the bottom of the agency's priority list, a requester should be mindful that the agency must balance other functions and duties with the person's request for records.

I believe that the DCS, having identified precisely what records you are requesting and having made a plan to review them and disclose records that are not exempt, will complete the task as soon as possible.

CONCLUSION

For the foregoing reasons, I find that the Division of Child Services could have produced e-mail records more timely, but did not intend to evade or violate the requirements of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: John Wood