

May 3, 2006

Bobby Peck
#865349
Westville Control Unit
P.O. Box 557
Westville, IN 46391

Re: Formal Complaint 06-FC-61; Alleged Violation of the Access to Public Records Act by the Control Unit, Westville Correctional Facility

Dear Mr. Peck:

This is in response to your formal complaint alleging that the Control Unit of Westville Correctional Facility ("Facility") violated the Access to Public Records Act by failing to respond to your request for records.

BACKGROUND

On March 20, 2006, you sent two requests for records to persons at the Facility. One request, for a Facility employee roster, was sent to the Superintendent. The second request, for any and all D.O.C. classification proceedings that were conducted in relation to you from March 2, 2005 to the present date, was addressed to Pam Bane, "Complex Director." You allege in your formal complaint that you did not receive any response from the Facility.

I sent a copy of your complaint to the Facility. I received the enclosed copy of correspondence to you dated April 7, 2006. In the memorandum to you, Ms. Elaine Zschoche, Litigation Liaison of the Facility wrote informing you of the cost of the employee roster, and apologizing that your request was not honored sooner. Ms. Zschoche became aware of your request only after receiving a copy of it from my office. She consulted with Facility staff that would have been aware of your request, but was unable to determine the whereabouts of your original request. Ms. Zschoche did not refer to your request for the D.O.C. proceedings, although I included that request to the Facility when I faxed your complaint.

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 Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A public agency that receives a request for a record by mail is required to respond to the request within seven (7) days, or the request is deemed denied.

The Facility apparently has not determined whether it received your request. If the Facility received your request and failed to respond within seven days, the Facility violated the Access to Public Records Act. If the Facility did not receive your request, no violation would have occurred. The Facility apparently will make available for inspection and copying the employee roster. The Facility omitted any mention of the records regarding your D.O.C. proceedings. To the extent that the Facility received this request and failed to respond to it within seven days, the Facility violated the Access to Public Records Act. I advise the Facility to respond to your March 20 request to Pam Bane, a copy of which I am sending once again to the Facility with the Facility's copy of this advisory opinion. In its response, the Facility should either disclose the record or explain why it is exempt.

CONCLUSION

If the Control Unit of the Westville Correctional Facility received your requests for records, the Facility was required to respond within seven days. If it failed to do so, the Facility violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Elaine Zschoche