

January 14, 2008

Sherman VanDyke
3516 North Rural Street
Indianapolis, Indiana 46218

Re: Formal Complaint 08-FC-10; Alleged Violation of the Access to Public Records Act by the Indiana Civil Rights Commission

Dear Mr. VanDyke:

This is in response to your formal complaint alleging the Indiana Civil Rights Commission ("Commission") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Commission's response to your complaint for your reference. It is my opinion that the Commission did not violate the APRA.

BACKGROUND

In your complaint you allege that you submitted to the Commission a request for access to records dated December 5, 2007. Specifically, you requested information related to the Executive Director's background and experience, among other information. Receiving no response, you submitted your complaint on December 17.

The Commission responded to your complaint by letter from Michael Healy, Staff Counsel. Mr. Healy indicated that the office received your request on December 11 (the office was closed for two days for a staff retreat). Mr. Healy then worked with the State Personnel Department to gather the information. Mr. Healy mailed you the requested information on December 17.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. §5-14-3-1. The Commission is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Commission

during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). The response is not necessarily required to include production of the records. In a response the agency should acknowledge the request has been received and indicate how and when the agency intends to comply. The records should be produced within a reasonable period of time.

It is my understanding the Commission received your request on December 11. Since the request was made by mail, the Commission was required to respond to the request within seven days of receipt. I.C. §5-14-3-9. The Commission responded to the request and produced the requested records within seven days of receipt of your request. The Commission sent the records to you on the same day you filed this complaint, so I assume the two communications crossed in the mail. It is my opinion the Commission did not violate the APRA since the Commission provided the information you requested and responded to your request within the time allowed by the APRA.

I would note that it appears the Commission created a record listing the information you requested. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, the Commission was not required to create a new record containing the information you requested.

CONCLUSION

For the foregoing reasons, it is my opinion the Commission has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Michael Healy, Indiana Civil Rights Commission