



STATE OF INDIANA

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August 12, 2009

David Snyder
236 East Pendle Street
South Bend, Indiana 46637

Re: Formal Complaint 09-FC-178; Alleged Violation of the Access to Public Records Act by the Indiana Family and Social Services Administration

Dear Mr. Snyder:

This advisory opinion is in response to your formal complaint alleging the Indiana Family and Social Services Administration ("FSSA") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for copies of records. A copy of FSSA's response to the complaint is enclosed for your reference. It is my opinion FSSA has not violated the APRA.

BACKGROUND

You allege that on July 31, 2009 you sent a request to FSSA, seeking copies of records associated with a July 15 hearing. You filed the present complaint on August 5, alleging you had received no response to the request. You requested priority status for the complaint. Because you alleged one of the circumstances set forth in 61 IAC 1-1-3, priority status was granted.

FSSA responded to the complaint by letter dated August 7. FSSA indicated that on August 7 it sent to you the records you requested. Further, FSSA contends it had no record of having been previously contacted by you.

ANALYSIS

The public policy of the APRA states, "(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 FSSA is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the FSSA 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 (or as this office has said, electronic mail) 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).

If FSSA did receive your request, the agency would have had a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if FSSA did not receive your request, FSSA did not violate the APRA by not responding.

I would note that you submitted the complaint before the seven day response time provided in I.C. § 5-14-3-9(b) had passed, if FSSA had received the request on July 31. As such, it is my opinion that FSSA had not violated the APRA at the time of the complaint, as FSSA would have had seven days after receipt of the request to respond. FSSA did not receive the request on July 31 but received a copy of the request with the copy of the complaint my office sent on August 5. FSSA's response, made on August 7 after having received a copy of the complaint, was timely under the APRA.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jessaca Turner Stults, Family and Social Services Administration
Randall Powers, Family and Social Services Administration