



STATE OF INDIANA

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January 5, 2009

Ted Czanderna
212 North 6th Street
West Terre Haute, Indiana 47885

Re: Formal Complaint 09-FC-2; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Services Vigo County Office

Dear Mr. Czanderna:

This advisory opinion is in response to your formal complaints alleging the Indiana Department of Child Services Vigo County Office ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaints is enclosed. In my opinion the Department did not violate the APRA.

BACKGROUND

You filed the present complaint on December 8, 2008. You allege that the Department has refused to release what you call your records to a private agency. You allege the denial was on November 23, 2008.

The Department responded to the complaint by letter dated December 23 from Elizabeth Lewis. The Department contends that your complaint was premature in that at the time you faxed your complaint, the Department had not denied you access to the records and was instead preparing the records pursuant to your request. The Department further contends it sent you records on December 9 and on December 23.

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 Department 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 Department 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). If the request is made in person and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you contend the denial of access occurred on November 23, but you do not indicate what took place on November 23 that constituted denial of access. Any matters related to the licensing process at the Department are outside the purview of this office. It is my understanding you requested records from the Department on December 1 and on December 10. While the Department was obligated to respond to each request within the time periods set out in I.C. § 5-14-3-9, each response could have been an acknowledgement of receipt of the request. The Department was not required to produce the records within any specified timeframe.

The Department sent you records on December 9, which was eight days after your first request. The Department again sent you records on December 23, which was thirteen days after your subsequent request. In my opinion these are not unreasonable time periods for the Department to retrieve, review, copy and send the records to you.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Elizabeth Lewis