



STATE OF INDIANA

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April 20, 2009

Marvin Taylor, Sr.
DOC #995801
One Park Row
Michigan DCS, Indiana 46360

Re: Formal Complaint 09-FC-84; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Services, Marion County Office

Dear Mr. Taylor:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Child Services, Marion County Office ("DCS") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of DCS's response to the complaint is enclosed for your reference. It is my opinion the DCS has not violated the APRA.

BACKGROUND

You allege that on March 2, 2009 you requested from DCS copies of investigation reports. You allege DCS has denied you access to the records. Your complaint was postmarked on March 20, and my office received it on March 24.

DCS responded to the complaint by letter dated April 15 from Jennifer Hubartt, Director/Regional Manager for the Marion County local office. DCS contends the office has provided the records to you on at least three previous occasions. DCS sent the records to you again on April 13, with information declared confidential by I.C. 31-33-18 redacted.

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. DCS 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

DCS 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).

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). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

I cannot ascertain whether DCS initially responded to your request within seven days of receipt of the request. If it did, DCS has not violated the APRA. If the first response was made outside of the seven days, the response by DCS was untimely.

Regarding the substance of the request, DCS has again provided you copies of the records, which information declared confidential by I.C. 31-33-18 redacted. The APRA provides that when records contain disclosable and nondisclosable information, the agency shall separate the disclosable information and make that available. I.C. § 5-14-3-6. DCS has done that here by redacting information made confidential by I.C. 31-33-18 and thereby nondisclosable pursuant to I.C. § 5-14-3-4(a).

DCS contends it has provided you copies of the requested records on at least three previous occasions. The APRA addresses multiple requests for copies of the same records:

If:

- (1) a person is entitled to a copy of a public record under this chapter; and
- (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the agency must provide *at least one copy* of the public record to the person . . .

I.C. § 5-14-3-8(e), *emphasis added*.

The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). If DCS previously provided you with the records, the agency is under no obligation to continue to provide you additional copies of the same records.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jennifer Hubartt, Indiana Department of Child Services, Marion County Office