

November 8, 2004

Mr. Richard E. Wyatt
18710 U.S. 31 North
Westfield, IN 46074

Re: Formal Complaint 04-FC-186; Alleged Violation of the Access to Public Records Act by the Westfield Police Department

Dear Mr. Wyatt:

This is in response to your formal complaint alleging that the Westfield Police Department (“Police Department”) violated the Access to Public Records Act by denying you access to your own personnel file pertaining to certain periods of time. I find that the Police Department violated the Access to Public Records Act.

BACKGROUND

On September 13, 2004 you requested a copy of your personnel file from the Town of Westfield, and from the Westfield Police Department. You hand-delivered your request. The Westfield Police Department gave you only records covering the year 1996, although you were employed by the Police Department from 1980 through June 1997. Missing was your personnel file covering 1980 through 1995, and January 1997 through June 1997. When you discovered that the documentation was missing, you inquired of the Police Department and the Town Manager regarding where the missing files were. Neither agency has been able to explain why your complete personnel file is not available.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency’s regular business hours. IC 5-14-3-3(a). A person may inspect and copy his or her own personnel file, pursuant to IC 5-14-3-4(b)(8). It appears that the Police Department has been unable to locate a significant portion of your personnel file, and you allege that the file was either irretrievably lost, or perhaps destroyed.

IC 5-14-3-7(a) imposes a duty on public agencies to protect public records from loss, alteration, mutilation, or destruction. IC 5-15 applies to certain records of public agencies that are required to be maintained for a period of time, and destroyed only in accordance with an established records retention schedule. IC 5-14-3-4(e)(1) states that public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15.

I do not have the benefit of a response from the Police Department, although I forwarded a copy of your complaint to the Town Marshal. In any event, the Police Department's inability to account for your personnel file, or its failure to produce it if it maintains one, is a violation of the Access to Public Records Act. IC 5-14-3-4(e); IC 5-14-3-7(a). At a minimum, the Police Department should have been able to produce documentation that your personnel file had been destroyed in accordance with a destruction notice that would have been created contemporaneous with the destruction of the records under a records retention schedule. IC 5-15-6-2.5(d).

CONCLUSION

For the foregoing reasons, I find that the Police Department violated the Access to Public Records Act when it was unable to produce your entire personnel file, or to demonstrate that it had been destroyed in accordance with IC 5-15.

Sincerely,

Karen Davis
Public Access Counselor

cc: Bryan Foster
Indiana Commission on Public Records