

August 25, 2005

Rita K. Staton
6632 Sonesta Drive
Indianapolis, IN 46217

Re: Formal Complaint 05-FC-150; Alleged Violation of the Access to Public Records Act by the Marion County Department of Child Services

Dear Ms. Staton:

This is in response to your formal complaint alleging that the Marion County Department of Child Services violated the Access to Public Records Act by denying you records regarding employees.

BACKGROUND

You filed your formal complaint with the Office of the Public Access Counselor on July 26, 2005. You allege that the Department of Child Services (“Department”) violated the Access to Public Records Act by denying you records. You attached a copy of an e-mail message sent from the Department’s Mr. Dan Brumfield to you as evidence of the denial.

You allege that you hand-delivered your request for personnel information about eight Department employees on July 19, 2005. You do not state who or where you delivered your request, and you do not allege whether you received any denial at the time you delivered your request. There is also some evidence that you sent your request by certified mail to Donna Lewis, attorney for the Department, although it is not clear when you mailed your request. You also sent an e-mail request for the same information on Friday, July 22, 2005 to Dan Brumfield and Donna Lewis of the Department. On Monday, July 25 Mr. Brumfield, Family Case Manager for the Department, sent to you via e-mail this message: “I was informed by my legal counsel that this request must be made by your attorney to the Marion County Department of Child Services legal department.”

In the meantime, the Department’s human resources manager Lillian Motton sent you a letter dated July 21, 2005, that stated in part: “Please be assured that it is our intent to comply.

The data is being compiled, and we will commit to deliver the information to you as soon as it is practical.” Again, the record is unclear, but this may have been a response to your mailed or hand-delivered request. On July 27, 2005, Jennifer Hubartt, chief counsel to the Department, sent you an e-mail acknowledging receipt of the e-mail that you sent to Mr. Brumfield on July 22.

The Department responded to your formal complaint, stating that it had timely responded to the written request for records that it had received on July 21, with the letter of Ms. Motton of that same date. Furthermore, the Department stated that it is only required to respond within certain timeframes, not produce the records. The Department described its efforts to gather documentation and perform a legal review of it prior to its release. The Department supplemented its complaint response in an August 17 letter in which it stated that it had sent you the records on seven of the eight employees on August 10, 2005 (the Department did not have records on the eighth person).

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency’s regular business hours, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). An agency that receives a request in person is required to respond within twenty-four hours. IC 5-14-3-9(a). If the agency receives a request for records via U.S. mail, facsimile, or e-mail, the agency is required to respond within seven calendar days. IC 5-14-3-9(b). If the agency fails to respond timely to a request for records, the agency is deemed to have denied the request. An agency must respond in writing to a written request for records. IC 5-14-3-9(c). A response contemplates an acknowledgement of the request and a description by the agency of how and when it intends to comply. The agency is not required to produce the records within these timeframes, but must allow inspection and copying within a reasonable period of time.

Personnel files of public employees may be withheld by a public agency, except that certain information within a public employee’s files is required to be disclosed. IC 5-14-3-4(b)(8). A person must particularize his or her request by employee name. IC 5-14-3-4(b)(8). You have requested all the information that is required to be disclosed under section 4(b)(8) for each of eight named employees. The Department does not dispute that it is required to disclose this information about these public employees, and in fact has disclosed this information to you. The gravamen of your complaint is that you received a message from Mr. Brumfield indicating that your request would have to be sent through your attorney to the legal department. It is possible that you received Mr. Brumfield’s July 25 message prior to receiving Ms. Motton’s letter. In any event, the messages are inconsistent and would have been confusing as to the Department’s stance.

On the record before me, I make the following observations. If you hand-delivered your request for records on July 19, 2005, a Wednesday, the Department would have been required to *issue* a response on Thursday, July 20, 2005 (mailing a response on that date would have been timely). As the first written response appears to have been made by Ms. Motton on July 21, the Department would have failed to respond within 24 hours.

The e-mail message from Mr. Brumfield stating that you must make your record request by your attorney denied the right of “any person” to inspect and copy a record of a public agency. IC 5-14-3-3(a). A public agency may not deny or interfere with the exercise of the right stated in IC 5-14-3-3(a).

The other responses of the Department appear to have been timely and appropriate. Also, although you do not allege that the time in which the Department produced the records was unreasonable, I take the opportunity to state that I do not believe that three weeks to compile personnel records from various parts of the agency was wholly unreasonable.

CONCLUSION

I find that the Marion County Department of Child Services violated the Access to Public Records Act when it responded to one of your requests by stating that your attorney must serve your request to the Department’s legal department. The Department may have also failed to timely respond to your hand-delivered request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. John Wood
Ms. Jennifer Hubartt