

December 22, 2005

Mr. Michael Troutman
#984870
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-257; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Troutman:

This is in response to your formal complaint alleging that the Indiana State Prison (“ISP”) violated the Access to Public Records Act (“APRA”) by denying you a record regarding your tort claim. I find that the ISP did not violate the APRA.

BACKGROUND

You filed two Notices of Tort Claim with the ISP earlier in 2005. On November 2, 2005, you sent an APRA request form to Barry Nothstine at the Indiana State Prison. You are seeking 1) whether the investigation has been completed; 2) the date of the completion; 3) why it has not been completed if it has not; and 4) the findings or recommendations if the investigation is completed. You asked to be advised as to the cost of copying the requested records.

You provided me copies of a series of communications between you and Mr. Nothstine. On November 30, Mr. Nothstine advised you that an extension of time was needed to confirm with an individual in Indianapolis the status of the tort claims. On December 7, Mr. Nothstine wrote you again to clarify that he did not intend to state that he was denying you a record; rather, Mr. Nothstine indicated he was seeking to determine whether the records exist. You wrote Mr. Nothstine on December 7 to indicate that you believed that there was no need to find out the information from a person with the Central Office at the Department of Correction; you believed that your request was a straightforward request for records that should be maintained “in house.” The communications culminated in Mr. Nothstine’s December 9 memo to you in which he stated that he believed that you were merely asking for information in the form of questions, and the

APRA does not require a public agency to respond to questions. I received your formal complaint on December 20, 2005.¹

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency is not required to create a record to fulfill a person's request for a record or for information. Only where a public agency maintains a record that has been identified with reasonable particularity is the agency required to disclose the record. IC 5-14-3-3(a)(1).

Your request for records, a copy of which you enclosed, seeks information regarding whether your tort claims have been resolved, why they have not been resolved, and if resolved, what the findings were. If the agency and the attorney general have not completed an investigation of your claim, or have not finally reduced your claim to a resolution to pay your claim, the records you seek may not exist. Furthermore, the ISP is not required to create a record to explain why the investigation has not been completed. To the extent that you are seeking existing records that explain why the investigation has been completed, I do not believe that you have identified a record with reasonable particularity.

Throughout the communication with Mr. Nothstine, it seems apparent that he has endeavored to learn information about your claims, and the ISP may well desire to assist you in finding out information. But under the APRA, the agency is only required to disclose an existing record that will respond to your questions or fulfill your well-stated request for records. The ISP has not violated the Access to Public Records Act. Because the ISP told you that it does not currently have a record regarding the status or outcome of your claim, it fulfilled its duty under the APRA.

CONCLUSION

For the foregoing reasons, the Indiana State Prison did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Barry Nothstine

¹ Indiana Code 5-14-5-8 requires that I immediately forward a copy of any properly filed formal complaint to the public agency that is the subject of the complaint. I do so with this opinion. Normally, the complaint is forwarded to the public agency before an opinion is composed in order that the agency be afforded an opportunity to respond. While the ISP may prepare and file a response, its response is unnecessary to resolution of the complaint, based on a plain reading of the statutes at issue and the documentation that you supply in your complaint.