

March 4, 2005

Robert E. Keeby
D.O.C. #851763
727 Moon Road
Plainfield, IN 46168

Re: Formal Complaint 05-FC-28; Alleged Violation of the Access to Public Records Act by the Plainfield Correctional Facility

Dear Mr. Keeby:

This is in response to your formal complaint alleging that the Plainfield Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records.

BACKGROUND

You allege that you sent a written request for records to the Facility, although you do not specify when you sent your request. You claim that you were denied the record on January 10, 2005, where you did not receive a response in seven days. You requested from Todd Sprinkle, Administrative Support Manager at the Facility, three types of documents: 1) the commissary and recreation fund balance sheet for fiscal years 2001, 2002, 2003, and 2004; 2) Form 45029 "request for recreation fund purchase" for fiscal years 2001, 2002, 2003, and 2004; and 3) records showing the copying fees paid by prisoners for the fiscal years 2001, 2002, 2003 and 2004.

You filed your formal complaint with my office on February 2, 2005. I sent a copy of your complaint to the Facility. I enclose the written response of William Lamb, Administrative Assistant for the Facility. In it, he states that Mr. Sprinkle "does not recall the public access request" and was not aware of it until seeing the complaint. Mr. Lamb also states that you are entitled to access to the records you are seeking, except to the extent that confidential information is contained in any of the records. He further states that the \$.10 per page copying fee set by the Indiana Department of Administration for state agency records will prevail for copies of these records.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind.Code 5-14-3-3(a). When a public agency receives a request for records, the public agency is required to respond within certain timeframes, depending upon how the request is sent. Where the request is sent in person or by telephone, the agency has 24 hours to respond. IC 5-14-3-9(a). If the request is sent by U.S. Mail, by facsimile, or by electronic mail, the agency must respond within seven (7) days. IC 5-14-3-9(b).

The Facility did not respond at the time that you filed your formal complaint on February 2, 2005. In the Facility's response, it stated that Todd Sprinkle, the person that you sent your request to, did not recall the request. This statement stops short of declaring that the *Facility* had not received the request, or even that Mr. Sprinkle had looked for the request and had determined that the request had not been received. Yet, your documentation does not demonstrate that, in fact, you had mailed your request or had sent it in a properly addressed and stamped envelope. On the facts that I have before me, I cannot determine whether the Facility received your request and failed to timely respond, or did not receive your request. Under the latter scenario, the Facility would not have violated the Access to Public Records Act because a public agency must receive a request for records before it is obligated (or even able) to respond to it. If the Facility did receive your request, its failure to respond within the appropriate timeframes would have been a violation of the Access to Public Records Act.

In any event, as you will see from the Facility's response, the Facility intends to fulfill your request for the records, to the extent that such records exist, and to the extent they do not contain confidential information or information that is not disclosable at the agency's discretion. When the Facility responds in substance to your request, if it does not maintain particular records, it should so state affirmatively. Also, if the Facility maintains requested documents that contain some confidential or nondisclosable information, it must separate the material that may be disclosed and make it available for inspection and copying. IC 5-14-3-6(a). If the Facility intends to deny a record or part of a record, it must issue a denial in writing that includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). The Facility may charge you the \$.10 per page copying fee, pursuant to IC 5-14-3-8(c).

CONCLUSION

Because I cannot determine whether the Plainfield Correctional Facility actually received your record request, I cannot determine whether the Facility did or did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: William Lamb