

March 21, 2005

Mr. Donnie D. Slayton
Orange County Jail
205 East Main Street
Paoli, IN 47454

Re: Formal Complaint 05-FC-36; Alleged Violation of the Access to Public Records Act by the Orange County Substance Abuse Program

Dear Mr. Slayton:

This is in response to your formal complaint alleging that the Orange County Substance Abuse Program of the Orange County Circuit Court (“Program”) violated the Access to Public Records Act by denying you a record. I find that the Program did not violate the Access to Public Records Act.

BACKGROUND

You sent a request for records dated January 30, 2005 to the Orange County Substance Abuse Program at the Orange County Circuit Court. You asked to be provided with “a copy of all rules, regulations, local ordinances, policies, procedures, and guidelines in reference to the establishment and operations of all Indiana Department of Corrections approved programs at the Orange County Jail.” Having heard no response, you filed your formal complaint with my office on February 17, 2005.

I sent a copy of your complaint to the Orange County Clerk, who is keeper of the records of the Orange County Circuit Court. In reply, I received a letter from Honorable Larry R. Blanton, Judge of the Orange Circuit Court. I have enclosed a copy of the letter for your reference.

In his response, Judge Blanton states that the Program is not managed by, created by or established by any governmental agency, department or court of Indiana or of Orange County. He states that the Program is privately owned and operated by Orange County Substance Abuse, Inc. The court does not maintain any records of the Program.

After you filed your complaint, you submitted to me a letter responding to the issue of whether the Program is subject to the Access to Public Records Act. You maintain that the Program has an office in the courthouse in Orange County and directs programs for the Jail; therefore, the Program is subject to the APRA. You also requested that I contact Sue Lester, Programs Manager for the Indiana Department of Correction to determine if you can obtain the records through her office.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours. Ind.Code 5-14-3-3(a). A "public agency" is defined in the APRA at IC 5-14-3-2. An entity exercising the judicial power of the state, like a court, is a public agency subject to the APRA. IC 5-14-3-2. Also, an entity that is subject to an audit by the state board of accounts is a public agency under the APRA. IC 5-14-3-2. The fact that the agency occupies space in a public building does not make it a "public agency" under the definition of "public agency" in APRA. The burden of proving that an entity is a "public agency" within the meaning of the Access to Public Records Act is on the person asserting his rights under the APRA. *Perry County Development, Corp. v. Kempf*, 712 N.E.2d 1020 (Ind.Ct.App. 1999).

Under IC 5-11-1-9, certain entities, including for profit and not for profit entities, may be subject to audit by the state board of accounts if they meet certain conditions. The determination of whether an entity is subject to audit is the sole responsibility of the state board of accounts.

The Program is not part of the Orange County Circuit Court, or any court of the State, according to Judge Blanton. Therefore, it is not a "public agency" as that term pertains to agencies exercising the judicial power of the state.

During my investigation, I determined that Orange County Substance Abuse, Inc. is a for-profit domestic corporation registered by the Indiana Secretary of State's Office. I learned that the state board of accounts has not determined whether the Program meets the conditions set forth in IC 5-11-1-9, because no annual report has been filed with the state board of accounts by Orange County Substance Abuse, Inc. as of the date of this opinion. In fact, I have no information at this time indicating whether the Program receives any funding that would require it to file an annual report with the state board of accounts. Because you have not sustained your burden of proving that the Program is a "public agency" under the APRA, I cannot find that its failure to respond to your request or make its records available was a violation of the APRA.

I must decline your invitation to contact the Indiana Department of Correction on your behalf to determine whether it maintains the records you seek. I suggest that you contact the Department of Correction to request the records. I will offer assistance if you believe you are denied a record in violation of the APRA. *See* IC 5-14-4, IC 5-14-5.

CONCLUSION

For the foregoing reasons, I find that neither the Orange County Substance Abuse, Inc. nor the Orange County Circuit Court has violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Judge Larry Blanton
Orange County Substance Abuse, Inc.