

April 4, 2005

Brent D. Lewis
7400 Golden Davis Road NW
New Salisbury, IN 47161

Re: Formal Complaint 05-FC-47; Alleged Violation of the Access to Public Records Act by Furthering Youth, Incorporated d/b/a Gerdon Youth Center

Dear Mr. Lewis:

This is in response to your formal complaint alleging that Furthering Youth, Incorporated d/b/a Gerdon Youth Center ("Center") violated the Access to Public Records Act by failing to provide you with your own personnel file. I find that if the Center was a public agency, it was required to provide your own personnel file.

BACKGROUND

On February 10, 2005, you made a request for your personnel file in person to Debbie Heazlitt, the then-Executive Director of the Center. She denied your request. On February 15, 2005, you executed an authorization to David Dillman, a board member of the Center, authorizing him to receive a copy of your personnel file on your behalf. You allege that Ms. Heazlitt denied him access. Finally, you mailed a letter dated February 21, 2005 to Ms. Heazlitt requesting a full and complete copy of your own personnel file. As of the date that your formal complaint was filed, March 3, 2005, you had not received a copy of your personnel file.

I sent a copy of your complaint to the Center. I have been informed by telephone that Ms. Heazlitt is no longer employed by the Center. I was also told by David Dillman that he gave you your personnel file on or about March 4. I also called the Indiana State Board of Accounts to inquire whether that agency had determined whether the Center is "subject to audit" by that agency. Mr. Mike Bozyski informed me that the 2004 calendar year E-1 annual report had not been received by the state board of accounts (as of March 8) but for 2003, the State Board of Accounts had granted a waiver, meaning that the Center was not a public agency during 2003. For the calendar years 2001 and 2002, the Center *was* subject to audit by the state board of accounts.

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 Access to Public Records Act. Ind. Code 5-14-3-3(a). "Public agency" is defined in IC 5-14-3-2. The definition of "public agency" includes any entity or office that is subject to an audit by the state board of accounts. An entity is subject to an audit by the state board of accounts if it meets the conditions in IC 5-11-1-9. Pursuant to these provisions, a private entity that is supported in whole or in part by public funds may be considered to be a public agency. Whether such an entity is subject to an audit is determined by the nature and extent to which the entity receives public funds. Pursuant to IC 5-11-1-9(b)(2), a not for profit entity that derives at least fifty (50%) and more than \$100,000 in public funds shall be subject to an audit. This determination is made by the state board of accounts at the end of the entity's year.

Personnel files of public employees may, in the agency's discretion, not be disclosed. IC 5-14-3-4(b)(8). However, all personnel file information shall be made available to the affected employee or his representative. IC 5-14-3-4(b)(8). Therefore, if the Center met the criteria of a public agency during the time in which you requested your personnel file, it was subject to the APRA's requirement that your own personnel file information be available for inspection and copying. If the Center was subject to an audit, Ms. Heazlitt's denial of your personnel file would have been a violation of the Access to Public Records Act.

Mr. Dillman stated that he had provided you with a copy of your personnel file on or about March 4.

CONCLUSION

For the foregoing reasons, I find that Furthering Youth, Incorporated d/b/a Gerdon Youth Center was required to provide you with your own personnel file if it was a public agency under the Access to Public Records Act for the relevant time period.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. David Dillman