

September 25, 2006

Henry H. Case  
#158829  
P.O. Box 900  
Bunker Hill, Indiana 46914

*Re: Formal Complaint 06-FC-149; Alleged Violation of the Access to Public Records Act by the Rush County Probation Department*

Dear Mr. Case:

This is in response to your formal complaint alleging that Rush County Probation Department (“Department”) violated the Access to Public Records Act by failing to give you an accounting of probation user fees paid. I find that the Department should have responded to your request. I further find that the Department may not withhold a record without citing the exemption allowing the agency to withhold the record.

#### BACKGROUND

You claim in your formal complaint that you asked the Rush Superior Court to refund the probation fees that you had prepaid in a criminal action. Judge David Northam ordered the Department to provide him with a full accounting of the fees paid. On July 6, 2006, Chief Probation Officer Mark Fields wrote you that he had provided the accounting to the Court, but Mr. Fields did not provide you with a copy.

Thereafter, you asked the Department for a copy of the accounting that Mr. Fields had sent to the Court. The last such request was sent on August 1, but as of the date you filed your complaint, you had not received any response to your requests. You allege you have been denied access to a public record.

I sent a copy of your complaint to the Department. Mr. Fields responded by letter, a copy of which is attached for your reference. Mr. Fields’ sole response was a cover letter to me enclosing the letter to you of July 6, as well as a copy of the May 30 letter to the Court stating

how the Department had accounted for the probation user fees. I have also provided you with a copy of these letters.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A public agency must respond to a request for a record that the public agency has received by mail within seven (7) days of receipt, or the request is deemed denied. IC 5-14-3-9(b). If the public agency denies a written request for a record, it must deny the record in writing, and state the exemption or exemptions that authorize the agency to withhold the public record, and the name and title or position of the person responsible for withholding the record. IC 5-14-3-9(c).

Because you requested the record by mail, you were entitled to a written response from the Department within seven days of the Department's receipt of the request, or by August 11 with mailing time. If the Department intended to deny the record, the Department was required to state the exemption that authorized it to withhold the record, by citing the statutory basis in the Access to Public Records Act. By its non-response, the Department violated the Access to Public Records Act.

The Department has belatedly provided a copy of the letter that was sent to the Court in May. While this information appears to be responsive to your records request, it does not alter my determination that the Department violated the Access to Public Records Act.

#### CONCLUSION

For the foregoing reasons, I find that the Rush County Probation Department violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mark Fields