

June 6, 2007

Marvin F. Taylor
#995801
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: Formal Complaint 07-FC-126; Alleged Violation of the Access to Public Records Act by the Marion County Jail

Dear Mr. Taylor:

This is in response to your formal complaint alleging that the Marion County Jail (“Jail”) violated the Access to Public Records Act by refusing to provide you with a copy of your medical records from the jail. I find that the jail is required to maintain your medical records for at least seven years, and if the jail destroyed the records in accordance with the records retention schedule, the Jail did not violate the Access to Public Records Act. However, I cannot determine whether or not the Jail violated the Access to Public Records Act on the facts before me.

BACKGROUND

You allege that the Jail failed to respond to your requests for copies of your medical records. The Jail sent me the enclosed documentation in response to your complaint. The Jail shows that it had responded to your request, but ultimately found that your records are no longer available because they are more than seven years of age and may be destroyed under Indiana Code 16-39-7-1(b).

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 (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public

agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

The Jail has substantiated that it responded to you. The latest letter was issued on February 2, 2007 and informed you that the jail medical office has reported not finding your records. I find that you have not shown a denial of a record by virtue of any failure to respond. Rather, you may be complaining that the records are missing.

A public agency is required to protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a). Notwithstanding this provision, public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15. IC 5-14-3-4(e).

In other words, generally records must be protected and safeguarded by a public agency, and may be destroyed only when the schedule that applies to that record permits destruction. The determination of when a record may be destroyed is affected by the age of the record and statutory requirements applying to that specific type of record.

Here the Jail states that in accordance with IC 16-39-7-1(b), a provider is required to maintain original health records for at least seven years. Even if the Jail's medical unit is a provider under IC 16-39-7-1(a), it is my opinion that the medical records maintained by the Jail regarding inmates are subject to Indiana Code 5-15, and should be destroyed only in accordance with record retention schedules applicable to the county sheriff, the agency that maintains the jail.

I have no evidence showing whether or not the Jail destroyed the medical record or did so in accordance with the applicable record retention schedule. I can state only that if your records were destroyed after seven years, the Jail did not violate IC 16-39-7-1.

CONCLUSION

For the foregoing reasons, I cannot conclude whether or not the Marion County Jail violated the Access to Public Records Act with respect to the loss of your medical records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Kevin C. Murray