

June 28, 2007

Maribeth S. Coller
400 E. Third Street, Suite 1
Bloomington, IN 47401

Re: Formal Complaint 07-FC-143; Alleged Violation of the Access to Public Records Act by the Indiana Department of Workforce Development

Dear Ms. Coller:

This is in response to your formal complaint alleging that the Indiana Department of Workforce Development (“DWD”) violated the Access to Public Records Act by being non-responsive to your requests for data concerning unemployment compensation decisions of administrative law judges. I find that the DWD should have maintained regular contact with you concerning your request for data, and was required to provide all disclosable data maintained in its computer.

BACKGROUND

Your quest for information concerning appeal decisions for administrative law judges (ALJs) of the DWD began in October 2006. You contacted DWD requesting to review the decisions of one ALJ, Paul DeMoss, for the time period of October 1, 2003 to September 30, 2006. You had a telephone conversation with counsel for DWD about your request. You learned that you cannot review the actual decisions because information about claimants and employers of DWD are protected under Indiana Code 22-4-19-6(b).

You modified your request at that time, seeking summary information about the decisions of Judge DeMoss. The DWD promised to explore what information could be obtained from its computer that would address your questions. From November 10 until January 10, you were unable to reach the DWD counsel to learn what information would be available. On January 10, 2007, you reiterated your request for information, specifying that you would like summary information showing how many appeals Judge DeMoss has heard, how many have been brought by employers, how many have been brought by employees, how many times he has affirmed or

overturned the deputy decision when the employer is the appealing party, and how many times he has affirmed or overturned the deputy decision when the employee is the appealing party.

After failing to receive any response to the January request, you filed a formal complaint with the Office of the Public Access Counselor. I sent your complaint to DWD, assigning the complaint #07-FC-30. When you received the summary information concerning Judge DeMoss, and when the DWD seemed agreeable to providing you the same type of information concerning other ALJs, you agreed to withdraw your formal complaint.

You sought the same summary information concerning the other ALJs as you received concerning Judge DeMoss. You now allege in this formal complaint that the DWD has not responded as promised. Specifically, you have not received the breakdown for the other ALJs and the DWD has not responded to your follow-up calls concerning progress in compiling the data.

I sent a copy of your complaint to the DWD. Initially no response was filed. Once I spoke with Kristine Musall, counsel to DWD, I offered guidance that resulted in your receipt, by electronic mail on June 27, of summary data concerning the other ALJs.

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). A public agency is required to respond to a request for records within seven days if the request is received by U.S. Mail or facsimile, or the request is deemed denied. IC 5-14-3-9(b). A public agency should provide the records within a reasonable time, under the circumstances. This office has stated that where a request for a record or information may take some time to compile, the agency is well-advised to maintain contact with the requester at regular intervals to advise the person of the agency’s progress.

Except as provided in IC 22-4-19-6(d), information relating to the payment of benefits, among other things, is confidential and may not be published or be open to public inspection in any manner revealing the individual’s or the employing unit’s identity. IC 22-4-19-6(b). The DWD may release summary statistical data to the public. IC 22-4-19-6(d).

A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system must make reasonable efforts to provide to a person a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency’s data storage system. IC 5-14-3-3(d).

A public agency is not required to create or compile a record that does not already exist. This is because the APRA requires that a public agency disclose a public record, which is defined as any material that is “created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m). Where paper records are requested, the fact that a public agency is not required to create or compile information is easily understood. However, where

records or information are stored in an electronic database that may be manipulated and sorted, the public agency must make “reasonable efforts” to provide a copy of the data.

The DWD does not generate or maintain reports from its database comparing the rates of affirmance or reversal of its ALJs under the circumstances you set forth, according to the DWD. However, the data sent by the DWD yesterday shows numbers of total decisions generated by each ALJ and a number for each type of disposition. Whether this is all the data maintained by the DWD that would meet your purposes I cannot say. However, it is my opinion that the DWD is required to make reasonable efforts to retrieve all disclosable data in its database that is responsive to your request. It is also my opinion that the DWD does not have to create reports from its data that do not already exist.

I also find that the DWD should have been responsive to your calls requesting status of your request. Had the DWD been responsive, this complaint could have been averted.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Workforce Development should have apprised you of its efforts to retrieve disclosable data in response to your requests, should have maintained regular contact with you, and was required to make reasonable efforts to provide all disclosable data in its database.

Sincerely,

Karen Davis
Public Access Counselor

cc: A. Kristine Musall