

July 27, 2007

Jessica Elliott
2790 Roberts Road
Richmond, Indiana 47374

Re: Formal Complaint 07-FC-178 and 07-FC-180; Alleged Violation of the Access to Public Records Act by the Indiana Department of Children Services Union and Wayne County Offices

Dear Ms. Elliott:

This is in response to your formal complaint alleging the Indiana Department of Child Services Union and Wayne County Office (“Department”) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3) by failing to respond to your requests for records. A copy of the Department’s response is enclosed for your reference. I find that while the Department did not respond to your request in writing as required by the APRA, the Department did not otherwise violate the Access to Public Records Act.

BACKGROUND

Your complaints, received by the Public Access Counselor’s Office on June 27, 2007, allege the Department violated the APRA by not responding to your requests of May 22, 2007 for all records regarding your case with the Department. Because of the similarity of the two complaints and because the staff working at the two offices and responding to the complaints are the same, the two complaints have been consolidated into one opinion.

In response to your complaint, the Department indicates it did receive your requests. Because you are represented by counsel, the Department thought contacting you directly was barred by attorney professional conduct rules. As such, the Department indicates it contacted your attorney and told her you would be provided the copies you requested at a fee of \$.10 per page. The Department estimates the file at 800 to 1,000 pages. The Department understood your attorney would convey the information to you. The Department does not indicate the date of this conversation but in an internal communication dated May 31 referred to the conversation

as occurring “several days ago.” After receiving a copy of your complaint, the Department contacted your attorney and confirmed she did tell you about the copy fee. The Department indicates it stands ready to make a copy of the file but is awaiting confirmation and payment from you to do so.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2.

The Department is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1)(2). Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b). It has long been the opinion of the Office of the Public Access Counselor that “response” in this provision does not equal production of the records. The response could contain an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

A state agency may collect a uniform copy fee not to exceed \$.10 for providing copies of public records. IC 5-14-3-8. The agency may require the payment in advance of providing copies.

You sent your request on May 22, 2007. The APRA requires the agency to respond in writing to a written request within seven days of receipt of the request. IC 5-14-3-9(b). The APRA does not provide an exception to response for requesters who are represented by counsel. While the Department did contact your attorney by telephone at some point prior to May 31 to discuss your request, the response from the Department should have been made in writing since your request was made in writing. IC 5-14-3-9(c). The Department did not comply with the writing requirement but did attempt to respond to your request by contacting your attorney.

Substantively, the Department has granted your request. The Department has indicated it will make copies of the disclosable information in your file upon payment of a copy fee of \$.10 per page. This is not a violation of the APRA.

CONCLUSION

For the foregoing reasons, I find that while the Indiana Department of Children Services Union and Wayne County Offices did not respond to your request in writing as required by the APRA, the Department did not otherwise violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Jennifer Pyclik, Indiana Department of Children Services