

July 30, 2007

Sherry Rose
252 North Turkey Creek Road
Liberty, Indiana 47353

Re: Formal Complaint 07-FC-181 and 07-FC-182; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Services

Dear Ms. Rose:

This is in response to your formal complaints alleging the Indiana Department of Child Services Union and Wayne County Offices (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by failing to respond to your request for records. A copy of the Department’s response to your complaints is enclosed for your reference. Because the two complaints you filed allege denial by the same public agency, the same response was sent by the agency in reference to both complaints, and the staff at both offices is the same related to this matter, I have consolidated the complaints and will address both in this opinion. The Department provides evidence it did respond to your request. While the response was untimely, I find that the Department did not otherwise violate the APRA.

BACKGROUND

Your complaint alleges you sought records from the Department by letter dated May 30, 2007. You specifically requested records with any mention of your name dated 2004 to 2007.

In response to your complaint, the Department provided a copy of a letter sent to you dated June 25, 2007. In the letter the Department indicated it has no records responsive to your request. The Department further indicates if there were any records responsive to your request in a case file, they would be confidential under Ind. Code 31-33-18 and not disclosable to you.

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. 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).

The Department is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. 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).

Records declared confidential by statute may not be disclosed by a public agency unless access to the records is specifically required by state or federal statute or is ordered by a court under the rules of discovery. IC 5-14-3-4(a).

Your complaint alleges the Department did not respond to your request. The Department provided evidence it did on June 25, 2007 respond to your request indicating it does not have any records responsive to your request. The Department further indicates if it did have responsive records, they would be non-disclosable under IC 31-33-18, which requires confidentiality of records in the possession of the Department concerning investigations of child abuse or neglect. This statutory requirement of confidentiality excepts the records from disclosure under IC 5-14-3-4(a).

While untimely under the statute, the Department did respond to your request indicating it has not responsive records.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Child Services Union County and Wayne County Office’s response was not timely under the Access to Public Records Act. I further find that the response does not otherwise violate the APRA.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Jennifer Pyclik, Department of Child Services