

February 5, 2007

June L. Schattner  
3214 Chapel Road  
Anderson, IN 46012

*Re: Formal Complaint 07-FC-2; Alleged Violation of the Access to Public Records Act by the Madison County Department of Child Services*

Dear Ms. Schattner:

This is in response to your formal complaint alleging that the Madison County Department of Child Services (“DCS”) violated the Access to Public Records Act by failing to disclose records you requested. I find that the DCS did not provide adequate reasons why the file could not have been disclosed to you in less than three months. In addition, the DCS was required to provide a form to request a record if you were required to submit your request for records in writing.

#### BACKGROUND

On October 2, 2006, you submitted a written request for various documents concerning the investigation concerning you and your son. You identified the investigation by number. There were ten categories of records that included information that appears to be information that would be contained in the investigatory file. You faxed your request and received a confirmation that the fax was received. When you received no response to your request, you re-faxed the same request on November 8, 2006. You visited the DCS on November 13, and were promised the records within 90 days from the request. When this time had elapsed and still no records were forthcoming, you filed a formal complaint with the Office of the Public Access Counselor.

You also allege that you had asked about written internal policies or guidance for investigations of child abuse, and the receptionist told you that there were none, or that you were not entitled to them.

I sent a copy of your complaint to the DCS. Staff attorney Dorothy Ferguson provided a written response, a copy of which is enclosed for your reference. She stated that the DCS responded to your request and mailed the requested documents to you on January 5, 2007. The DCS maintains that it provided the requested documents within a reasonable time under the circumstances. No one indicated that the DCS would deny you the records. The investigation about which you requested records occurred in 1999. The DCS staff had to locate the archived file to determine if the requested documentation was contained in that file. With the holidays and time off from work, the age of the documents, and the work load of the staff, the DCS did comply with the request within a reasonable time.

Further, the DCS has no record showing that you ever requested policies and procedures governing the DCS investigation of child abuse. If you had included this request with your formal request of the file, you would have been told that the procedures are available at the DCS website at [www.in.gov/dcs](http://www.in.gov/dcs). This information would have been made available to you if you had formally requested it.

## 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 by mail or by facsimile, the public agency is required to respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). A response could be a letter acknowledging receipt of the request, and some indication of how and when the agency intends to comply. The production of the records is not subject to any specific time within the APRA. Rather, the Office of Public Access Counselor has said that records should be produced within a reasonable period of time under the circumstances. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). A request for inspection and copying must be, at the discretion of the agency, in writing on or in a form provided by the agency. IC 5-14-3-3(a)(2).

You have not raised the question of a timely response, but I note that the DCS has not shown that it issued a response to your records request within seven days of receiving your fax. Instead, you had to contact the DCS to find out the status of your request. This non-response is deemed a denial, in violation of the APRA. IC 5-14-3-9(b).

The question of whether a public agency has produced the documents in a reasonable period of time is a fact-sensitive one. Here, the agency gives generalized reasons why the record was provided more than 90 days after receipt of the request. Perhaps I should begin by stating that, in my opinion, providing this discrete set of records in a little over 90 days was an excessive amount of time on its face. The DCS cited the “holidays” as one reason that the file was not provided sooner. While eight state holidays were within the 90 days after the request was received and before the file was produced, only one day, October 9, was a state holiday within the month of October. The request was received October 2. Also, the file was from a 1999 investigation, but again, no information is provided that shows that the file was actually maintained in an off-site storage facility, or whether the record was requested in a timely manner

from off-site storage but delayed due to no fault of the DCS. There was also no information showing that the records that were provided were contained wholly within the investigative file or had to be searched for in various other places within DCS. The DCS was required to attend to myriad other duties, to be sure. However, again, I find that the conclusory statement that the workload of the DCS played a role in the production time does nothing to explain why it would take more than 90 days to produce the file. It appears from the complaint that you filed that you were told that the records would be produced 90 days from your request, and the DCS did provide them nearly within that timeframe. It might be the case that the DCS has set a timeframe of 90 days to retrieve and copy records. While for some record requests, this may be a reasonable timeframe, it would not be for all requests for files. It is my opinion that the DCS has not set forth justification for producing the records 93 days after receiving your request.

With respect to your request for policies of the DCS, the DCS has stated that it has no record that you requested this information in writing. Your written request for the investigative file did not contain any request for policies or procedures. If you asked the DCS receptionist about policies and procedures concerning DCS investigations, the receptionist should have given you the opportunity to formalize your request in or on a form provided by the DCS. *See* IC 5-14-3-3(a)(2). The DCS could not ignore your request for this record, if you communicated it orally to the DCS, merely because you did not know to set forth your request in writing. The DCS was required to tell you of this requirement.

#### CONCLUSION

For the foregoing reasons, I find that the Madison County Department of Child Services did not timely provide the records or adequately justify that the records were timely provided under the specific circumstances. Further, the Madison County Department of Child Services failed to provide you with instructions for formalizing your request for policies and procedures.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Dorothy Ferguson