

March 19, 2007

Marshall R. Patton
4405 E. Springersville Road
Connersville, IN 47331

Re: Formal Complaint 07-FC-42; Alleged Violation of the Access to Public Records Act by the Fayette County Public Library

Dear Mr. Patton:

This is in response to your formal complaint alleging that the Fayette County Public Library (“Library”) violated the Access to Public Records Act by denying you records.

BACKGROUND

You do not explain what records you requested, but I have since learned from the Library that you requested the bookmobile’s garage lease agreement, a breakdown of monthly expenditures, and copies of the three bids for the new roof. You received the lease agreement, but were denied the other two records. You also seem to complain about visiting the library expecting to receive the records during your visit but found that Library Director Ms. Helen Holmstrom was out and the records were in her locked office. You also marked the “Open Door Law” box on the complaint but have not alleged any facts concerning a meeting of the Library’s board.

I sent a copy of your complaint to Ms. Holmstrom, who submitted the enclosed response. Ms. Holmstrom stated that your records were available as early as December 2, but you did not retrieve the information even though you attended two different library board meetings. When you came to the Library unannounced on January 16, Ms. Holmstrom did not anticipate your visit and happened to be out that day. When you returned the next day, you were asked to wait a short time while Ms. Holmstrom completed a meeting with the renovation project engineer. You apparently could not wait. After you left, Ms. Holmstrom sent the records to you by certified mail.

Ms. Holmstrom acknowledged issuing a denial to you. She enclosed the denial letter. The monthly expenditure report for November 2006 was denied because it contains court ordered garnishment of an employee's wages and confidential financial contributions to credit unions, annuities, and retirement accounts. She was told that release of that information about six of the employees could bring suit for release of their confidential financial information. Hence, the record was denied under IC 5-14-3-4(a)(5) for confidential financial information obtained upon request from a person.

The second record, three bids for the Library's roof project, were denied under Indiana Code 5-14-3-4(b)(5) for records relating to negotiations created while the negotiations are in process. The repair of the Library's roof has not been completed. Further investigation is needed and negotiations are in process. No bid has been accepted yet. If the project requires re-bidding, public release of the information would be unwise. The Library believes the bid information should be confidential.

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).

If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial is in writing or by facsimile, and the denial includes the denial is in writing or by facsimile and the denial includes:

(A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

(B) the name and the title or position of the person responsible for the denial.

IC 5-14-3-9(c).

Without any specific provisions in the APRA for when records must be produced, this office has stated that the records should be produced within a reasonable time, under the facts and circumstances. Your complaint on this score appears to be that your unannounced visit should have garnered the records. Although there is some dispute regarding whether you knew the records were available long before January 16, the person who could have given you the records happened to be out of the office that day, and you could not wait for the records during a short time the following day. Accordingly, the Library decided to mail the records. Under these circumstances, I do not believe that your complaint sets forth adequate cause to find that the Library did not produce the records within a reasonable time.

The Denied Records

There are several exemptions that would require or allow a public agency to withhold certain records. *See* IC 5-14-3-4. The exceptions to disclosure are to be narrowly construed, with the burden of proof to sustain the denial on the public agency that would deny the record. IC 5-14-3-1.

Monthly Expenditure Report.

Confidential financial information obtained, upon request, from a person must be withheld. However, this does not include information that is filed with or received by a public agency pursuant to state statute. IC 5-14-3-4(a)(5). The information described by Ms. Holmstrom may not fit within this exception. Not all financial information in the possession of the Library regarding a person is confidential financial information. In addition, if the information is received by the public agency pursuant to state statute, the exemption does not apply. It is not clear whether the information about garnishment orders is filed pursuant to a state statute providing for such garnishments, but the Library should make sure that the exemption applies to all the different types of financial information being withheld.

In addition, the Library is required to separate nondisclosable information within a record and disclose that part of the report that does not contain confidential financial information. *See* IC 5-14-3-6(a). It would appear that a monthly expenditure report may contain partly disclosable information that should have been provided to you.

Bids

You were denied the bids on the roofing project, under IC 5-14-3-4(b)(5). Records relating to negotiations between the Indiana economic development corporation, the Indiana finance authority, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress, are exempt at the discretion of the public agency. IC 5-14-3-4(b)(5). However, the bids for replacing the roof of the library do not come within the ambit of this exemption, because the Library is not the Indiana economic development corporation, the Indiana finance authority, or an economic development commission. Therefore, the bids are not exempt under IC 5-14-3-4(b)(5), and the Library may not withhold them under this exemption.

Records declared confidential by state statute must be withheld. IC 5-14-3-4(a)(1). Under IC 5-22-9-4, proposals submitted in a request for proposal must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. I do not know whether this provision applies to the bids for the Library roofing project, because I do not know whether the Library let the work under a request for proposal. There may be other state statutes that would allow the Library to withhold the bids until the time the contract is awarded. The Library should determine what state statute, if any, allows the Library to withhold the bids. If no exemption applies, the Library should disclose the bids to you.

CONCLUSION

For the foregoing reasons, I find that the Fayette County Public Library may not deny records unless a specific exemption applies to those records. The Library bears the burden to show that the records are exempt.

Sincerely,

Karen Davis
Public Access Counselor

cc: Helen Holmstrom