

April 9, 2007

David A. Mann
221 Spring Street
Jeffersonville, IN 47130

Re: Formal Complaint 07-FC-66; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Services

Dear Mr. Mann:

This is in response to your formal complaint alleging that the Indiana Department of Child Services (“Department”) violated the Access to Public Records Act by failing to produce the records after repeated requests. I find that the Department violated the Access to Public Records Act.

BACKGROUND

You complain that you have requested records of the Department a number of times, and you have never received the records or a letter of denial. I sent your complaint to the Department. Ms. Susan Tielking has now sent you a substantive response to your request. To your request for the budget, she indicated how the budget could be located on the Department’s webpage. She also enclosed a copy of the budget with the letter. She denied your request for the database containing incident reports from child abuse investigation across the state. Ms. Tielking cited Indiana Code 31-33-18-1 and Indiana Code 31-33-20-4 for the confidentiality of these records.

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 a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The Department's response to your complaint is a copy of the letter dated March 9 providing the budget and denying the incident report database. This response implies that this is the first substantive response that you had received to the request of February 13. Therefore, the Department has violated the Access to Public Records Act when it failed to respond within seven days, or even if a preliminary response was issued within seven days, by not timely providing a fuller response such as the one issued today.

I have reviewed the law cited by the Department to deny the incident report database, and it appears that the record is confidential under IC 5-14-3-4(a)(1) and IC 31-33-18-1 and IC 31-33-20-4. A public agency such as the Department may not disclose a record that is declared confidential by state statute.

CONCLUSION

For the foregoing reasons, I find that the Department of Child Services violated the Access to Public Records Act by not timely providing a copy of the budget, and by not denying the confidential records in a timely manner.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan Tielking