

April 19, 2007

Darrell Williams
#26008-044
United States Penitentiary
P.O. Box 1000
Lewisburg, PA 17837

Re: Formal Complaint 07-FC-74; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Williams:

This is in response to your formal complaint alleging that the Indiana Department of Correction (“Department”) violated the Access to Public Records Act by failing to respond to your request for records. I find that the Department failed to respond within the seven day time for response, and therefore violated the Access to Public Records Act.

BACKGROUND

You allege that you requested of the Department a listing of the full name of all correctional officers who were employed at the Indiana Department of Correction Reception and Diagnostic Center during the month of October 2004. You allege that you did not receive a response. You sent your complaint to this office on March 12, 2007.

I received a response to your complaint, submitted by Robert D. Bugher, Legal Services Director for the Department. He averred that the Department sent a response, and attached the letter dated March 14, 2007. The response stated that the Department does not have a listing of the full names of all correctional officers. Therefore, the Department would be unable to comply with the request.

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 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).

The Department stated it received your request on March 3, but responded on March 14, 2007 by sending you a letter on that date. The letter should have been sent by March 10 in order to be timely. The untimely response is deemed to be a denial under the Access to Public Records Act. It is clear that your complaint crossed in the mail with the Department’s responsive letter. Because the public often is aware that time for response for mailed requests is seven days, plus mailing time, it would behoove the Department to ensure timely response as much as possible in order to minimize the likelihood the Department will receive a complaint, and with it the attendant time to respond to the complaint.

In any event, the response of the Department disclaiming that it has a list of correctional officer names is, on its face, a permissible response. A public agency is not required to compile or create a record to satisfy a request for a record.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Correction violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Robert D. Bugher