

August 31, 2005

Tyrone Frazier
#910476
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-159; Alleged Violation of the Access to Public Records Act by the Indiana Judicial Nominating Commission

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Indiana Judicial Nominating Commission (“Commission”) violated the Access to Public Records Act by failing to give you a record.

BACKGROUND

You filed your formal complaint against the Commission with the Office of the Public Access Counselor on August 1, 2005. You stated that you requested a copy of the complaint that you had filed against Commissioner Nancy Broyles. In particular, you requested a file-stamped copy of the formal complaint showing when it was received by the Commission.

In response to your complaint, Ms. Meg Babcock, counsel to the Commission stated that the Commission received your first request for the record on June 22, 2005, and a second request for the same record on July 25, 2005. The Commission mailed you copies of the records on August 2, 2005.

ANALYSIS

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 the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). Your complaint centers on your failure to

receive a copy of the records you sought; you should now have received those records. They were mailed to you eight days after the Commission received your second request. Although the Commission sent the records to you shortly after your second request, its response was untimely under the APRA because the APRA requires that agencies respond within seven (7) days of receipt of a request. *See* IC 5-14-3-9(b). A response may just be an acknowledgment letter; the APRA does not impose a time requirement on the production of the record. Where the Commission responded with the records themselves, this one-day delay in responding seems inadvertent.

However, the Commission has been forthcoming with me in revealing that it received your first request for the record, on June 22, 2005. As I stated earlier, where the Commission failed to respond within seven days to your June request, this failure was a violation of the Access to Public Records Act. IC 5-14-3-9(b).

CONCLUSION

The Indiana Judicial Nominating Commission failed to timely respond to your requests for records, but has now fulfilled your record request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Meg Babcock