

September 12, 2005

James Franklin Elliott  
347 North 500 East  
Anderson, IN 46017

*Re: Formal Complaint 05-FC-163; Alleged Violation of the Access to Public Records Act by the Correctional Industrial Facility*

Dear Mr. Elliott:

This is in response to your formal complaint alleging that the Correctional Industrial Facility ("Facility") violated the Access to Public Records Act by failing to timely respond to your request for records.

#### BACKGROUND

You allege in your formal complaint, filed with the Office of the Public Access Counselor on August 11, 2005, that you gave a written request on July 28, 2005 to the Facility Personnel Director, Mr. Daniel Kapoun. As of August 4, 2005, you had not received a response. You allege that when you inquired on that date of Steve Hodge in Personnel, he indicated that Mr. Kapoun was handling your request. You further allege that you spoke with Mr. Kapoun on August 9, 2005. You resubmitted your request, in writing, to Mr. Kapoun on August 9 at approximately 11:00 a.m., at his request. You had not received a response as of the filing of your complaint.

Mr. Kapoun responded in writing to your complaint, a copy of which is enclosed for your reference. Mr. Kapoun contradicted your statement that you delivered your request for records on July 28 to him, citing his absence from the office on vacation on July 28<sup>th</sup> and July 29<sup>th</sup>. He also indicated that he did not receive any written request prior to August 12, 2005. He confirmed that you had spoken with him prior to August 12 and at the time you spoke, he requested that you put your request in writing. On August 15, Mr. Kapoun responded to your request by giving you the personnel information that you sought.

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A public agency may not deny or interfere with the exercise of the right stated in subsection (a). IC 5-14-3-3(b). A request for inspection or 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). A public agency that receives a request when the person requesting the record is physically present in the office must respond within twenty-four (24) hours of receiving the request. IC 5-14-3-9(a). If the request is mailed, faxed, or e-mailed, the agency must respond within seven calendar days of receipt. IC 5-14-3-9(b). A response to a written request for records must be in writing. IC 5-14-3-9(c).

From Mr. Kapoun's response, it is not clear whether the public agency received a written request for records from you prior to August 12. You did not specify how your initial, July 28 request was delivered to the agency. Mr. Kapoun stated only that he personally did not receive a written request from you until August 12 (Mr. Kapoun's August 15 letter to you stated "This correspondence is in reply to your written request for information received *by this writer* on August 12, 2005")(Emphasis supplied).

A request for records is received by the public agency when delivered to the public agency, irrespective of when the person addressed in the request or the person ultimately responsible for the agency's response receives it or assumes control over it. Hence, whether or not Mr. Kapoun was on vacation when you delivered your first written request to the Facility, the Facility's obligation to respond within the timeframes established in IC 5-14-3-9(a) or (b) were triggered when the request was received by the Facility.

The Office of the Public Access Counselor cannot sort out conflicting versions of events or find facts; only a court of competent jurisdiction is tasked with establishing facts regarding a public agency's compliance with the Access to Public Records Act. IC 5-14-3-9(f). Hence, I cannot say with certainty whether or not the Facility violated the APRA. However, if the Facility received a written request for records via hand-delivery more than 24 hours before August 15, 2005 (the date the Facility sent its written response), or more than seven days before August 15 if the request was received by mail, facsimile, or e-mail, then its August 15 response was tardy under IC 5-14-3-9(a) or (b).

In any event, it appears that the Facility has given you the information that you sought.

## CONCLUSION

If the Correctional Industrial Facility received your written request for records and failed to timely respond, it violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Daniel G. Kapoun