

January 4, 2006

*Sent Via Facsimile*

Scott J. Cooper  
P.O. Box 22327  
Indianapolis, IN 46222

*Re: Formal Complaint 05-FC-244; Alleged Violation of the Access to Public Records Act by the Indiana Family and Social Services Administration*

Dear Mr. Cooper:

This is in response to your formal complaint alleging that the Indiana Family and Social Services Administration ("FSSA") violated the Access to Public Records Act by failing to give you records regarding its policies for investigating certain complaints.

#### BACKGROUND

According to your formal complaint, on November 5, you requested via e-mail three policies pertaining to Child Protective Services (CPS) investigative reports. First, you requested every policy pertaining to the time limits and procedures for preparing CPS investigative reports. Second, you sought the policies that address sanctions or discipline administered to individuals of the agency who fail to abide by those rules. Finally, you requested the policy addressing how a citizen files a formal complaint with FSSA for the FSSA's failure to follow the rules regarding timeliness of preparing CPS investigative reports. You state that you have been told that FSSA maintains no disciplinary policies that specifically relate to an employee's failure to complete an investigation in a timely manner, and no policies with respect to how the public can submit complaints regarding how FSSA handles an investigation. You allege that you have not received a copy of the policy that Mr. John Wood, FSSA Attorney, promised you on November 7 that sets out how the FSSA handles CPS investigations currently (the policy was then being revised).

I sent a copy of your complaint to the FSSA. As of the date of this advisory opinion, I have not received a response to your complaint. Therefore, I am basing this advisory opinion on

the facts as stated in your complaint and as contained in the e-mail documentation that you provided.

#### 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 ("APRA"). Ind. Code 5-14-3-3(a). If the agency receives a request for a record by e-mail, the public access counselor has stated that the agency has seven (7) days within which to respond, or the request is deemed denied. IC 5-14-3-9(b).

The requirement for response does not necessarily mean that the agency must produce the record within that time. There are no timeframes set out in the APRA for when an agency must produce a record. The public access counselor's office has stated that the time within which an agency should produce a record under the APRA must be reasonable under the facts and circumstances. Factors such as the specificity of the request, the number of records that must be identified and copied, and whether the records must be reviewed for disclosability are relevant to the inquiry.

It appears from your complaint that you concede the FSSA does not have a duty to produce policies that it does not maintain or has not created. Rather, you complain that as of the date of your complaint, Mr. Wood had not sent you a copy of the policy regarding how CPS investigations will be conducted. Assuming that the FSSA had not, as of December 5, sent you a copy of this policy, I agree that the FSSA has not produced the record in a timely manner. I am not aware of any exemption that would apply to any part of the record regarding an agency policy; hence, no redaction would have to be undertaken. You have requested but one record, and if it is a current policy, it should be readily identified and copied. In the absence of some extenuating circumstances of which I am uninformed, the FSSA has not produced the policy regarding CPS investigations in a timely manner. I recommend that the FSSA send you the policy as quickly as possible, if it has not done so already.

#### CONCLUSION

For the foregoing reasons, I conclude that the FSSA has not produced the policy regarding CPS investigations within a reasonable time.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John Wood