

February 4, 2005

Mr. Larriante J. Sumbry
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-6; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Indiana State Prison (“State Prison”) violated the Access to Public Records Act by failing to provide a record. I find that the Indiana State Prison did not violate the Access to Public Records Act.

BACKGROUND

You requested from the State Prison copies of employment contracts for 11 named individuals. You submitted your written request for these documents on December 13, 2004. According to the copy of your request supplied to me by Barry Nothstine of the State Prison, you also requested “a list of all contracts that this prison has with private companies.”

You filed your formal complaint with my office on January 5, 2005, alleging that you were being denied public records. You did not provide me with a copy of the response that you apparently received from Barry Nothstine. When I sent a copy of your complaint to the State Prison, Mr. Nothstine replied in writing. I enclose a copy of his response. He states that you received a timely response to your request for records that acknowledged receipt of your request and promised further action. He also supplied me with a copy of the substantive response of the State Prison, which was that the named individuals are state employees and therefore no employment contracts pertaining to those individuals exist. He also stated that the State Prison does not maintain a list of contracts relating to private companies.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the public agency's regular business hours, unless an exception to disclosure exists. Ind.Code 5-14-3-3(a). A public agency is required to respond in writing to a written request for records that is received via U.S. Mail, within seven (7) calendar days of the agency's receipt of the request. An agency is not required to produce a record that it does not maintain. A public agency is not required to create a record in response to a request for records, where the agency is not legally required to create or maintain the record.

The State Prison timely responded to your request for records, where it wrote you on the same day that it received your request, December 13, 2004. Within a few days of its first response, it sent you a letter indicating that it did not maintain employment contracts for the named individuals, and it did not maintain a list of public contracts with private companies. You do not claim that such a list is required to be maintained, and I am not aware of any law that required that the State Prison maintain such a list as of the date of your request for records. Accordingly, your complaint is without merit.

CONCLUSION

For the foregoing reasons, I find that the Indiana State Prison did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Barry Nothstine