

May 26, 2005

Mr. Chester Wilms
DOC # 943-594
Location G417
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-83; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department.

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the Fort Wayne Police Department (“Department”) violated the Access to Public Records Act by failing to respond to your request for public records. I find that the Fort Wayne Police Department did not violate the Access to Public Records Act.

BACKGROUND

I am writing today to address two formal complaints filed by you. The first complaint was signed by you on April 28, 2005 and received in this office on May 4, 2005.¹ In that complaint you stated that the Department failed to respond to your request for public records. You did not allege a date upon which you made your request, nor did you provide a copy of your request from which a date could be determined.

A copy of your complaint was forwarded to the Department. Ms. Carol Taylor responded on behalf of the Department by letter dated May 10, 2005. A copy of that response is enclosed for your reference. Ms. Taylor included a copy of your public records request in her letter. She indicated that your request for records was dated April 28, the same date as your complaint.

¹ The complaint was made against the “Allen County Booking Processing Concerning calling in and out”. However, you named the Fort Wayne Police Department Mayor Graham Richard as the Elected/Appointed Official or presiding Officer responsible for the denial. I have taken this to mean that the complaint is against the Fort Wayne Police Department.

Since you have failed to provide me with the date of your records request I can only assume that this is the request which you are complaining of. Ms. Taylor also indicated that your request was received in her office on May 5, 2005 and that she responded on that same date. It is necessary to note that Ms. Taylor indicated that she receives numerous requests from you to which she always responds.

The second complaint was signed by you on May 11, 2005 and postmarked on May 12, 2005.² You again fail to state a date upon which your public records request was made. The complaint appears to be against the same agency and of the same substance as your April 28, 2005 complaint. Due to your failure to provide the date upon which your public records request was made, I am unable to ascertain for certain whether this is a duplicate complaint regarding the same request. I will, therefore, have to assume that it is a duplicate of the April 28th complaint.

ANALYSIS

Any person may inspect and copy the public records of a public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

In regards to your first complaint, the public agency's duty to respond is not triggered until receipt of the request for public records. Since your complaint is dated the same day as the request it is apparent that you did not allow the agency seven (7) days to respond prior to filing your complaint. I also find that the agency did respond when the request was received, within seven (7) days.

Regarding your second complaint, I will not accept a complaint from you that does not allege the date upon which you filed your request with the agency. The Department has stated that you have filed numerous requests for records with that office. I am now receiving complaints from you that appear to be duplicates of previous complaints against identical agencies and requesting identical information. Unless you provide a date that can be matched by the agency to a request that has been received³, this office cannot be determine whether you are filing multiple complaints based on the same request or on a different request.

CONCLUSION

For the foregoing reasons, I find that Fort Wayne Police Department did not violate the Access to Public Records Act.

² You attached a copy of a Court Order to this complaint. I am returning the document to you with this opinion.

³ While the agency bears the burden of proof to defend a denial, it should not bear the burden of completing your complaints for you by trying to determine which request you are complaining of.

Sincerely,

Karen Davis
Public Access Counselor

cc: Carol Taylor