



STATE OF INDIANA

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October 26, 2009

Mr. Keith Robinson
251 N. Illinois St., Suite 1600
Indianapolis, IN 46241

*Re: Formal Complaint 09-FC-219; Alleged Violation of the Access to
Public Records Act by the Indiana Family and Social Services
Administration*

Dear Mr. Robinson:

This advisory opinion is in response to your formal complaint alleging the Indiana Family and Social Services Administration (“FSSA”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, it is my opinion that FSSA has not shown that the delay in production of records was reasonable. Further, it is my opinion that FSSA did not otherwise violate the APRA because it ultimately provided you with all requested records.

BACKGROUND

In your complaint, you allege that Associate Press reporter Ken Kusmer submitted via email a request to FSSA seeking FSSA’s fiscal year 2010 I-ADPU request to the Food and Nutrition Service and a copy of “the updated cost-benefit analysis and a description of the state’s cost-control efforts.” FSSA Communications Director Marcus Barlow responded via email on September 8, 2009. Mr. Barlow stated that the 2010 I-ADPU request had not yet been submitted but that he would provide it to Mr. Kusmer as soon as it is submitted. The Food and Nutrition Service confirmed to Mr. Kusmer on September 10, 2009, that it received the document from FSSA and that Mr. Kusmer should obtain it from FSSA. On September 14, 2009, Mr. Kusmer sent another request to Mr. Barlow for the documents he originally sought. As of September 24, 2009, Mr. Kusmer had not received a response from Mr. Barlow or the FSSA.

My office forwarded a copy of your complaint to the FSSA for a response. FSSA General Counsel and Legislative Director Jessaca Turner Stults responded on behalf of FSSA. Her response is enclosed for your review. In it, Ms. Stults states that FSSA has now provided Mr. Kusmer with all requested records.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The FSSA is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2.

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Mr. Kusmer made his initial records request on September 2, 2009. The FSSA responded to that request within seven (7) days as required by the APRA, but it did not produce the requested records until October 21, 2009. There are no prescribed timeframes when the records must be produced by a public agency. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. It is my opinion that the FSSA has not demonstrated that it produced the responsive records within a reasonable amount of time. If the FSSA required the time from September 8th to October 21st to make its response, it is likely this complaint could have been avoided by communicating the reasons for such delay to Mr. Kusmer. Nevertheless, I trust that FSSA’s response satisfies Mr. Kusmer’s request and resolves this issue.

CONCLUSION

For the foregoing reasons, it is my opinion that the FSSA has not shown that it produced the requested records within a reasonable period of time. However, because FSSA has released all requested documents to Mr. Kusmer, it is my opinion that FSSA has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Jessaca Turner Stults, Family and Social Services Administration