

November 3, 2006

Michael R. Jent
#973821
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 06-FC-171; Alleged Violation of the Access to Public Records Act by the City of Fort Wayne

Dear Mr. Jent:

This is in response to your formal complaint alleging that City of Fort Wayne (“City”) violated the Access to Public Records Act by failing to respond to your request within seven days of receipt. I find that the City did not fail to timely respond to your request; however, I find that the City is required to review your request for law enforcement records to determine whether the incident about which you seek records is contained in the daily log.

BACKGROUND

In September 2006, you mailed a request for records to the City. The City received your request on September 26, 2006. According to your complaint, you requested information regarding the arrest and photo of Simon Rios, a suspect involved in a criminal incident on August 29, 2004. You also requested a copy of the search warrant in regard to your residence. You claim that the City has failed to respond to your request.

The City responded to your complaint; I have attached a copy of the response for your reference. The City’s Associate Attorney Carol Taylor stated that the City issued a response within seven days, but the City inadvertently omitted your D.O.C. number and the letter was returned as undeliverable. The City sent the response anew on October 5, 2006. The response stated that the City is denying your request and cited the investigatory records exception at Indiana Code 5-14-3-4(b)(1).

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial is in writing or by facsimile, and the denial includes the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The City mailed its original denial to you in a timely manner. The City does not maintain that you did not supply your D.O.C. number, only that the City did not place your number on the outgoing mail. Although the City may have made a good faith effort to respond to your request within seven days, it omitted a number that is required to be placed on all mail to individuals housed in the Department of Correction. I urge the City to take care that mail to you and others is properly addressed.

A public agency may except from disclosure at the discretion of the agency “investigatory records of law enforcement agencies.” IC 5-14-3-4(b)(1). This was the exemption cited by the City in the September 27 response. This exemption also states: “However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.” IC 5-14-3-4(b)(1). Section 5(c) sets out the specific types of information that must be included in the law enforcement agency’s “daily log.”

You asserted in your complaint that the information you sought is included in the daily log; you referred to IC 5-14-3-5 in your complaint. The City has not offered any response with respect to your allegation that at least part of the records should part of the “daily log.” Your request appeared to be in reference to a specific incident that must be maintained as a daily log, and the City has not indicated that no such incident occurred.

The City should have supplied the applicable daily log to you in response to your request, or stated clearly that no such record exists (if the law enforcement agency did not receive that request for assistance). To the extent that the City did not make available its daily log, it violated the Access to Public Records Act in denying the records under the investigatory records exception.

CONCLUSION

For the foregoing reasons, I find that the City of Fort Wayne did not fail to timely respond to your request, but the City failed to give you a disclosable public record or, if no such record exists, to state that fact clearly.

Sincerely,

Karen Davis
Public Access Counselor

cc: Carol Taylor