

December 27, 2007

James C. Wallace II
Amanda D. Wallace
2338 8th Avenue
Terre Haute, Indiana 47804

Re: Your informal inquiry regarding the Vigo County office of the Indiana Division of Child Services

Dear Mr. and Mrs. Wallace:

This is in response to your informal inquiry dated December 20, 2006. You initially sent the complaint to the Consumer Protection Division of the Indiana Attorney General's Office, who received it December 12, 2006. The Attorney General's Office sent the complaint to this office since public access laws are in our purview. I apologize for the delay in the response. I took office July 1 of this year and found a backlog of informal inquiries. I am currently endeavoring to address the backlog and issue opinions in response to the inquiries, pursuant to Indiana Code §5-14-4-10(5).

BACKGROUND

You mailed to the Vigo County office of the Indiana Department of Child Services ("Office") a request for any case records pertaining to either of you for the calendar year 1985. The request was undated, but you provide United States Postal Service delivery confirmation that the request was received by the Office on July 21, 2006. You submitted an undated complaint to the Attorney General's Office, which was received on December 12. In the correspondence, you allege that the Office failed to comply with your request. The Attorney General's Office then sent the complaint to this office. My predecessor sent a copy of your correspondence to the Office for response.

The Office responded to your complaint by letter dated January 8, 2007. The Office indicates that Glenn Cardwell from the Office received your request and referred it to an employee for investigation. When no records responsive to your request were located, the Office overlooked the need to provide you with a written response. When the Office realized the mistake, the Office responded to you by letter dated January 4, 2007, indicating no records responsive to your request were located.

ANALYSIS

The public policy of the APRA states, "(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. The Office is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. 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 and the agency does not respond to the request within seven days, the request is deemed denied. I.C. §5-14-3-9(b).

Here the Office received your request on July 21, 2006. At that point Mr. Cardwell forwarded your request to an employee to determine whether any responsive records exist. The Office determined no responsive records existed but failed to send you a written response indicating such until several months later. As such, the Office's response was untimely under the APRA.

The Office did not find any records responsive to your request. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. The Office did not violate the APRA by not providing access to records it does not maintain.

For the foregoing reasons, it is my opinion that while the Office's response to your request was untimely under the APRA, the Office did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: John Wood, Deputy General Counsel, Indiana Department of Child Services
Lisa Adkins, Indiana Attorney General Consumer Protection Division