December 8, 2003

Fran Quigley
News Editor, NUVO, Inc.
3951 North Meridian Street
Indianapolis, IN 46208

Re: 03-FC-126
Alleged violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Quigley:

This is in response to your formal complaint, received on November 26, 2003, alleging that the Indiana Department of Correction (Department) violated the Indiana Access to Public Records Act (APRA) when it denied your request for a copy of a videotape created by the Department at the Miami Valley Correctional Facility. Mr. Robert D. Bugher, Legal Services Director for the Department, responded in writing to your complaint on behalf of the Department. A copy of the Department's response is attached for your reference. For the reasons set forth below, it is my opinion that the Department did not violate the APRA when it denied you access to the videotape.

BACKGROUND

According to your complaint, NUVO reporter Becky Orberg is reviewing the circumstances behind the death of Angel Oquendo, who was an inmate of the Miami Valley Correctional Facility. You allege Mr. Oquendo died after being subdued and restrained by corrections officers during an incident at the facility on December 4, 2002. You further allege that there is a divergence of opinion regarding whether the corrections officers used appropriate care with Mr. Oquendo, and that witnesses Ms. Orberg interviewed stated that the Department was in possession of a videotape recording the incident. At some point Ms. Orberg made a request for public records with the Department. The request is not included with the papers provided to me; however, your complaint alleges that it sought "to inspect and copy the videotape(s) that chronicle the events leading up to Angel Oquendo's death." The Department responded to your request for records on November 17, 2003. With regard to the videotape, the Department declined to produce the record pursuant to Indiana Code 5-14-3-4(b)(10) (the

security system exemption), which exempts from production at the Department's discretion any public record that contains "administrative or technical information that would jeopardize a record keeping or security system."[1]

You filed your formal complaint with this office on November 26, 2003. In it, you assert that the security system exception does not justify nondisclosure of the videotape because your request does not seek "technical information or private data connected to a security system." While you do not contest that the Department has a justifiable security interest or that the videotape is the product of cameras placed in support of that interest, you further challenge application of the security system exemption by asserting that the location of the security cameras at the facility is already well known to Department employees and inmates. In response, the Department asserts that the Department seeks to protect not simply the location of the cameras, but the capability of the camera technology. The Department asserts that the security system at the facility will be compromised by disclosure where such disclosure would provide the inmates with information about the capabilities or limitations of the Department's cameras, including camera angles and the opportunities they would provide for an inmate to escape detection within the facility.

ANALYSIS

The Department does not contest that it is a public agency or that the videotape being sought is a public record. *See* Ind. Code § 5-14-3-2. Accordingly, the only issue presented is whether the Department has met its burden of nondisclosure by declining to produce the videotape under the security system exemption. I find that the Department has met its burden.

Indiana Code 5-14-3-4(b)(10) provides that "[a]dministrative or technical information that would jeopardize a record keeping or security system" shall be excepted from the disclosure requirements of the APRA at the discretion of the public agency. Because the public policy of the APRA requires a liberal construction in favor of disclosure (*see* IC 5-14-3-1), exemptions to disclosure such as the security system exemption at issue here must be construed narrowly. *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995). However, a liberal construction of the APRA does not mean that the exemptions set forth by the legislature should be contravened. *Hetzel v. Thomas*, 516 N.E.2d 103, 106 (Ind. Ct. App. 1987).

In *City of Elkhart v. Agenda: Open Government*, 683 N.E.2d 622, 626-27 (Ind. Ct. App. 1997), the Indiana Court of Appeals addressed the security system exemption and found that it was not applicable to restrict disclosure of telephone numbers. In that case, a newsletter editor sought the 1993 cellular telephone bills for the Mayor of Elkhart and other city department heads. The city responded that an earlier and similar request resulted in the requestor misusing the Emergency 911 system by running the numbers through the system to obtain the identities of the persons belonging to the numbers. The city declined to produce the telephone records

[1] The Department's response apparently complied with the remainder of the records request in that it purports to supply a photograph of the Department's Commissioner and further responds to inquiries regarding another offender and the Department's facilities and programs. In any event, no allegations are made here that the Department's response was not timely or otherwise violates the APRA in the manner it responded to the request for records.

without assurances from the newsletter editor that no such misuse would occur with the records produced in response to the most recent request. The city relied upon the security system exemption to avoid production of the cellular telephone bills of the city officials. The city argued that the Emergency 911 system was a security system, and that the phone records of the city officials contained "technical" or "administrative" information (the phone numbers themselves) that if disclosed would jeopardize that Emergency 911 system. That is to say, if the requestor misused the system to trace the origin of the numbers, the security system would be jeopardized. The court found this argument unconvincing. Relying on common definitions of "technical" and "administrative,"[2] the court found that telephone numbers in and of themselves constitute neither technical nor administrative information. Applied to the Emergency 911 security system underpinning the city's argument, the court characterized the telephone numbers as "innocuous," and stated:

> [A]ny prior alleged misuse or speculated future misuse of information *which is innocuous on its face* is irrelevant. Section 4(b)(10) provides a discretionary exception for public records containing a "type" of information due to its nature and not because of a speculated "use" of the information would jeopardize a record keeping or security system.

683 N.E.2d at 627 (emphasis added). In *City of Elkhart*, the telephone numbers being sought by the newsletter editor were not part of the security system their disclosure was said to endanger. While they could be used, or misused, to burden and jeopardize that system, they were in and of themselves unrelated technically, administratively, or otherwise to the security system and like any number of things that could have had that same effect. They were not a "type" of technical or administrative information related to the security system that would, if disclosed, jeopardize the system.

Here, unlike the telephone numbers at issue in *City of Elkhart*, the videotape cannot be characterized as 'innocuous" or not of the "type" of technical or administrative information that due to its nature if disclosed would jeopardize the record keeping and security system the Department utilizes at the Miami Valley Correctional Facility. The videotape is part and parcel of the security system utilized by that facility. While you correctly note that the videotape represents a "chronicle of events," in my opinion it also represents information of the sort fully contemplated by the legislature when it codified the security system exemption. In that regard, I do not find that "technical information" must be so narrowly understood to mean, as your argument suggests, "private data" or some sequence of computer code or like information. The quality of the videotape and clarity of images projected may certainly be characterized as "technical information" regarding the security system that, if disclosed, could jeopardize that system. But even construed so narrowly as you suggest, the videotape cannot escape characterization of administrative information in that it is "of or relating to administration" of the security system. *See City of Elkhart*, 683 N.E.2d at 627; *see also* MERRIAM-WEBSTER ONLINE (http://www.m-w.com/, last accessed December 3, 2003) (defining "administration" as

[2] The court found that "technical may be defined as of or relating to technique and marked by or characteristic of specialization," and that "administrative may be defined as of or relating to administration." *City of Elkhart*, 683 N.E.2d at 626-27 (internal quotations and citations omitted).

the "act or process of administering" and "administer" as "to manage affairs"). Certainly, the Department uses video cameras to manage the affairs of its facilities. The Department asserts that beyond where those cameras are located, other factors regarding the capabilities and limitations of the cameras may be revealed by disclosure of the videotape. From such information as the camera angles an offender may determine from the videotape where they can hide from camera detection, and from that information avoid monitoring and commit infractions or offenses against corrections personnel and other inmates. The videotape may also reveal the operational times and operation status of specific cameras. In my opinion, such information relating to the administration of the security system would, if disclosed, jeopardize the security system and render the security provided by the cameras non-existent.[3]

CONCLUSION

For the reasons set forth above, it is my opinion that the videotape you have requested constitutes technical or administrative information, the disclosure of which would jeopardize the Department's record keeping and security system. Therefore, I find that the Department justifiably relied upon Indiana Code section 5-14-3-4(b)(10) to deny you access to the videotape and met its burden of nondisclosure under the Access to Public Records Act.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Robert D. Bugher, Legal Services Director, Department of Correction

[3] The Department offers additional support for nondisclosure under the security exemption citing *Piggie v. McBride*, 277 F.3d 922 (7th Cir. 2002), for the proposition that offenders do not have the right to view prison security videotapes if viewing them would jeopardize the security of the facility. While the court in *Piggie* did not go so far as the Department suggests, it did, in a prison disciplinary case involving a prison videotape, cite favorably to the general rule that prisoners may not be entitled to exculpatory evidence if disclosure would threaten the security of the facility. *Piggie*, 277 F.3d at 925; *see also Wolfe v. McDonnel*, 418 U.S. 539, 566, 84 S.Ct. 2963, 2979 (1974).