

October 22, 2003

Michael Hunt
Cell 1105-A-West
P.O. Box 111
Carlisle, IN 47838

Re: Formal Complaint 03-FC-86: *Alleged Denial of Access by Indiana Department of Correction*

Dear Mr. Hunt,

This is in response to your formal complaint, which was received on September 23, 2003. In it, you allege that the Indiana Department of Correction (the "Department") violated the Access to Public Records Act (the "APRA"). Specifically, you allege that you were denied access to lock down memoranda, classification forms 3412, 7263-C, 44355 and 3380, and confidential data from the transfer authority form. You also allege that you were denied access to a photocopier at the facility law library. Ms. Pam Pattison, Director of Media and Publications for the Department, responded to your complaint. A copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Department did not violate the APRA.

BACKGROUND

You allege that you were denied access to the following records: (1) lockdown memoranda to the central office for the secured housing unit when the operational procedures have been suspended; (2) classification forms 3412, 7263-C, 44355, 3380 and the classification detail, classification history, and classification results dated no later than July 8, 2003; and (3) "EDAC" confidential data from the transfer authority form. Finally, you allege that you were denied access to a photocopier at the facility's law library. You allege that this denial occurred on September 12, 2003.

In her response, Ms. Pattison references the August 13, 2003, memorandum from Administrative Assistant Rich Larsen, which you wrote over and enclosed with your complaint. Ms. Pattison states that some of the documentation you have requested does not exist, and that you may already have some of the documents you requested because they are provided to the offender population during annual reviews.

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.” Ind. Code § 5-14-3-1. Furthermore, “[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” Ind. Code § 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Any person has the right to inspect and copy the public records of the Department during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

In his August 13, 2003, memorandum to you, Mr. Larsen indicated that the documents you requested concerning the suspension of operational procedures for the Secured Housing Unit do not exist. A public agency cannot disclose that which it does not possess. Mr. Larsen also indicates that you are not authorized to have in your possession a transfer authority form. One exception to the general rule that public agencies must allow a person to inspect and copy a public record is found at Indiana Code § 5-14-3-4(b)(10), which allows a public agency to withhold “[a]dministrative or technical information that would jeopardize a record keeping or security system.” Although it would have been more helpful for Mr. Larsen to include in his response the specific statutory authority by which he was denying you access, Mr. Larsen was in the scope of his discretion under Ind. Code § 5-14-3-4(b) to deny you access. Finally, Mr. Larsen states that he is in the process of compiling the remainder of your requests.

In addition, the Department has statutory authority under Indiana Code chapter 11-11-2 to place limitations on the types of property that an offender can possess. Offenders are not permitted access to various forms under rules and policies adopted under the authority of Indiana Code chapter 11-11-2. The APRA is a statute of general application and in some cases the General Assembly has passed more specific statutes that supersede or override the provisions of the APRA. In this case, the Department has statutory authority to limit what you, as an offender may possess. As such, it is my opinion that the Department did not violate the APRA by denying you access to a copy of a Transfer Authority form, because Indiana Code chapter 11-11-2 allows the Department to withhold this public record from you.

You also contend that you were denied access to a photocopier. However, nothing in the APRA establishes a right to access to a photocopier. See Ind. Code § 5-14-3-3(b). The APRA only governs public records; it does not authorize the use of a public agency’s machine to make copies of documents in your possession.

CONCLUSION

It is my opinion that the Department did not violate the Access to Public Records Act by denying you access to a photocopier so that you would be able to make copies of documents in your possession, because the APRA does not authorize such use. It is also my opinion that the Department did not violate the APRA by improperly denying you access to public records because the records either do not exist, or are exempt from disclosure pursuant to statute, or are being provided to you.

Sincerely,

Sandra K. Bowman,
Acting Public Access Counselor

Cc: Pam Pattison, Department of Correction