

August 30, 2004

Mr. Bobby Peck, #865349
G-A/5-4-6D
Indiana Department of Correction
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: Advisory Opinion 04-FC-129; Alleged Violation of Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Peck:

This is in response to your formal complaint alleging that the Pendleton Correctional Facility ("Pendleton") violated the Access to Public Records Act ("APRA"), I.C. §5-14-3. Specifically, you allege that Pendleton failed to provide to you documents you requested in a timely manner, and that once provided, the records were incomplete. Mr. David Barr responded on behalf of Pendleton, a copy of which is enclosed for your reference. I find that neither the timeliness nor the content of Pendleton's response violated the Access to Public Records Act.

BACKGROUND

On July 6, 2004, you submitted a written request to the Pendleton Correctional Facility for the roster of the names of all staff employed at Pendleton. That same day, Mr. David Barr responded, advising you that he had received your request and that it was being processed. On July 13, 2004, Mr. Barr forwarded the list you requested to G. Vickery, the Unit Team Manager, with instructions to let you review it and to advise you of the charge for obtaining a copy. The Unit Team Manager turned the list over to your Counselor to give to you, however, your Counselor had a heart attack on July 15, 2004, and has not been back to work. On July 30, 2004, you filed a formal complaint with this office alleging that the timeliness of Pendleton's response to your request violated the APRA. That same day I forwarded a copy of that complaint to Pendleton. On August 2, 2004, Mr. Barr asked the Unit Team Manager if the list had been given to you; the Unit Team Manager replied that he did not know, and he could not find the list in your Counselor's files. On August 3, 2004, Mr. Barr provided the Unit Team Manager with

another copy of the list for your review. You state that you received the list on August 4, 2004. After receiving the list you requested, you submitted additional correspondence to our office adding to your complaint an allegation that the list provided to you was “outdated,” “incomplete,” and/or “fraudulent.” In support, you provide a list of people that you allege are employed at Pendleton whose names were not on the list provided to you. We forwarded a copy of your additional correspondence to Pendleton. In a written response and on the telephone, Mr. Barr states that the names you included in your correspondence are not in the personnel roster because those persons are not state employees. Rather, they are contractors who are the staff of a health care agency, and therefore, their names are not responsive to your request.

ANALYSIS

Timeliness of Record Production

It is the responsibility of a public agency to respond to requests for access to public records within a specified time period. The Access to Public Records Act does not set any time periods for producing public records, merely for responding to the request. I.C. §5-14-3-9. The production of records need only occur within a reasonable time of the date the public agency receives the request.

“There are practical reasons for such a rule. A public agency may be able to produce public records immediately in some cases, but more time may be required for production based on the nature and circumstances surrounding the public agency or regarding the request. These include such factors as whether the public agency is a full time agency or has a limited or part-time staff, or whether special circumstances within the agency or at the time of the request are already depleting the limited resources of the agency. Additional factors include whether the responsive records are current or whether they are stored in a central repository or on or off-site. Another factor influencing this issue is whether any of the responsive records include nondisclosable information that the public agency must separate from disclosable information or have reviewed by counsel to avoid disclosure of material that is required to be kept confidential by state or federal law. Interpreting Indiana Code 5-14-3-9 to require public agencies to produce records within a specific period of time would have the effect, in some cases, of requiring public agencies to stop activity on all other matters in order to provide the records requested. While providing information is an essential function of public agencies, the APRA also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. IC 5-14-3-1; IC 5-14-3-7(a). *Opinion of the Public Access Counselor 04-FC-31.*

The burden lies with the agency to show that the time period for producing the public record is reasonable. *Opinion of the Public Access Counselor 02-FC-45.*

Pendleton put together the list you requested by July 13, 2004, one week after your request was made. You received the list on August 4, 2004. Mr. Barr’s response states that the delay in production of the list was a result of the fact that the individual

charged with the responsibility of getting the list to you had a heart attack two days after he received the list from the Unit Team Manager, and had not been back to work. However, once Pendleton became aware of the fact that the list had not been given to you, they compiled another and immediately provided it to you. Because the measure of whether the production time has been reasonable includes factors such as “whether special circumstances within the agency or at the time of request are already depleting the limited resources of the agency,” it is my opinion that the time taken to produce the requested record was not unreasonable under these circumstances.

I note that Pendleton’s response says that “the Public Access Law states a public agency is not required to create a list of names upon request, unless that agency already maintains a list.” However, I.C. §5-4-3-3(f) states that a public agency is not required to create a list of names and addresses. A list of names or a list of addresses alone does not fall under this statute.

Completeness of Record

You also allege that the information provided to you is incomplete. In support of your allegation, you include a list of people who you believe are employees who were not included on the list Pendleton provided to you. In response to this allegation, Mr. Barr advises that the list of names that you include are not personnel of the facility, but rather are independent contractors. As such, he states that there are no personnel records kept on those people. Because those people are contractor staff and not employees of Pendleton Correctional Facility, failure to include them on the list of Pendleton personnel provided to you does not constitute a violation of the Access to Public Records Act.

CONCLUSION

For the above reasons, I find that the timeliness of the production of records in response to your request was not a violation of the Access to Public Records Act. Also, the failure to provide the names of independent contractors in a list of personnel of the Pendleton Correctional Facility was not a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. David Barr; w/out enclosures