

October 4, 2004

Mr. Bobby Peck, #865349  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 04-FC-155; Alleged Violation of the 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, I.C. §5-14-3, by failing to provide you access to the public records you requested. I find that the Pendleton Correctional Facility did not violate the Access to Public Records Act.

#### BACKGROUND

On August 16, 2004, you submitted to the Pendleton Correctional Facility a request for access to public records. Specifically, you requested the right to inspect the job title, classification, gross compensation, education and training, previous work experience, disciplinary history and job description of approximately 600 employees of the Pendleton Correctional Facility. On September 1, having not yet received access to those records, you filed a formal complaint. This office received your formal complaint on September 3, 2004, and I forwarded a copy of your complaint to Pendleton. Your complaint requested priority status; however, as your complaint alleged none of the circumstances required pursuant to 62 IAC 1-1-3, your request for priority status was denied.

Mr. Barr responded on behalf of Pendleton, a copy of which is enclosed for your reference. Mr. Barr states that on August 16, 2004, he responded to your request in writing by acknowledging receipt of your request and advising you that your request was forwarded to the appropriate personnel for handling. He also advises this office that since your request was made, you were transferred to the Indiana State Prison in Michigan City, Indiana.

## ANALYSIS

The Pendleton Correctional Facility is a public agency for purposes of the Access to Public Records Act. I.C. §5-14-3-2. Accordingly, any person may *inspect and copy* the public records of a public agency during the regular business hours of the agency except as otherwise provided by the law. I.C. §5-14-3- 3(a) (emphasis added). While the Access to Public Records Act provides a specific time frame for responding to requests for access to public records, it does not set any specific time periods for producing or providing access to those public records. 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." *Opinion of the Public Access Counselor 04-FC-31.*

Factors influencing the time frame with respect to providing access to public records include whether the agency has full time or part time staff, whether documents responsive to the request must be separated from nondisclosable records, whether there are special circumstances within the agency that deplete the limited resources of an agency, and the size of the request. Interpreting the Access to Public Records Act to require public agencies to produce records within a specific period of time may have the effect of forcing public agencies to stop all activity on all other matters in order to provide the records requested. Providing information is an essential function of public agencies; however, the Access to Public Records Act also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. I.C. §5-14-3-1; I.C. §5-14-3-7(a).

You allege that Pendleton's failure to provide the requested records to you by September 1, the date of your complaint, was unreasonable. 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.* You have requested personnel documents for nearly 600 people, particularized by name. Such a request is obviously voluminous. Mr. Barr alleges that requiring Pendleton to provide the documents requested to you within the two and a half (2 ½) weeks between the time you filed your request and the time you filed your complaint would be tantamount to requiring the office to halt the regular functions of the office to provide to you the documents you requested. Therefore, it is my opinion that the failure of Pendleton to provide access to the personnel records of 600 employees by September 1, and, in fact, by the date of this opinion, is not unreasonable.

Since you filed your complaint, you have been moved to the Indiana State Prison. Mr. Barr has asked if you are still interested in the information requested, and you have advised him that you are. Mr. Barr has since learned that it is the policy of the Indiana State Prison that public records may be inspected in the administration office only, which is not accessible to offenders. This office has addressed the issue of correctional facility restrictions with respect to

inspection of public records. *See Opinion of the Public Access Counselor 04-FC-43.* In that opinion, Mr. Lando Logan, an offender, requested access to public records, and was advised by the facility that the records were only available in the administrative offices of that facility, and that because offenders were not allowed in those offices, the only way to access those records was for the facility to provide copies to the offender at the offender's cost. Mr. Logan again requested to review the records in the administrative office, or some other area of the facility. The facility denied his request a second time and advised Mr. Logan that he would not be permitted to inspect the records, but could have copies provided to him at his expense. In that opinion, this office opined that an institutional safety and security restrictions, authorized by Indiana law and exercised by the facility, do not violate the Access to Public Records Act, even when those restrictions act to prohibit an offender from inspecting records.

“Circumstances may exist where physical inspection of a record is not practical or even possible, and reasonable access can only be accomplished through production of a copy of the record. Such is the case here. As an incarcerated offender, it is not possible for you to appear at a public agency during its normal business hours and inspect the records of that agency. *See I.C. §5-14-3-3(a).* Your status is no less significant when seeking to inspect the records of the facility where you are incarcerated.” *Opinion of the Public Access Counselor 04-FC-43.*

Therefore, though you have not raised this issue, it is my opinion that the security restrictions set forth by the Indiana State Prison on your access to areas of that facility does not violate your rights under the APRA. Furthermore, it is my opinion that the Access to Public Records Act does not require a correctional facility to allow you to inspect the public records in a "secure area," or to otherwise bring the records to you so that you may inspect them.

#### CONCLUSION

For the foregoing reasons, I find that the Pendleton Correctional Facility did not fail to allow inspection of its records and therefore did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. David Barr