

July 27, 2005

Clyde N. Piggie  
D.O.C. #933044  
Miami Correctional Facility  
P.O. Box 900  
Bunker Hill, IN 46914

*Re: Formal Complaint 05-FC-127; Alleged Violation of the Access to Public Records Act by the Miami Correctional Facility*

Dear Mr. Piggie:

This is in response to your formal complaint alleging that the Miami Correctional Facility (“Facility”) violated the Access to Public Records Act (“APRA”) by failing to provide the records that you have requested.

#### BACKGROUND

On June 27, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-127. In your complaint you allege that you have made several requests for various personnel records of approximately 31 employees on the following dates: May 2, 2005; May 18, 2005; and June 6, 2005. You stated that as of June 24, 2005 you had not received the requested documents, but had been told that the facility is in the process of compiling the requested records. You also refer to formal opinion # 05-FC-93, issued June 9, 2005, in which I referenced the Facility’s response that it was in the process of compiling the requested documents for you.

My office forwarded a copy of this complaint to the Facility. No response has been received from the Facility.

#### ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public

officials and employees, whose duty it is to provide the information.” IC 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.” IC 5-14-3-1.

### *Reasonable Production Time*

The APRA does not specify a time for production or inspection of responsive records, but this office has stated that records must be produced within a reasonable time of the request. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a "reasonable" time period under one circumstance may not be reasonable under other conditions. Production need not materially interfere with the regular discharge of the functions and duties of the public agency. IC 5-14-3-7(a). The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request.

Your first request was made nearly two months prior to the filing of your complaint; your last request was made approximately two weeks prior to the filing of your complaint. In addition, the Facility told this office that it was in the process of compiling those documents at the time that advisory opinion # 05-FC-93 was issued on June 9, 2005. While it appears that the number of responsive documents could be quite large, the information that you seek is limited to one type: personnel file information. This would indicate that the records would most likely be maintained in a single location. The agency has not provided a response to indicate whether there are circumstances that would make the retrieval of the requested records so time-consuming. Additionally, it is not within your complaint whether the agency has indicated to you a time frame for when you could expect those records; neither has the Facility provided this office with any indication as to when that production would occur. This office has long held that public agencies should communicate with requestors as to when they could expect to receive the requested documents.

Absent a reasonable explanation on behalf of the agency as to why production of the requested documents should take so long to occur, I find that a delay of approximately one to two months to respond to your first two requests is not reasonable. In regards to your third request, you had not received the documents approximately two weeks later when you filed this complaint. This time frame would be borderline acceptable for the production of documents. However, any longer delay may be unreasonable, absent a reasonable explanation.

### *Request to Order Production of Documents within One Week or to Take Disciplinary Action*

You have requested this office to, “order I receive the following within a week or request disciplinary action on the person who fails to do so.” It is not within the authority of this office to do either. IC 5-14-4-9. If you continue to be denied these records, you may file an action in superior court to compel the agency to produce the records. IC 5-14-3-9(e).

## CONCLUSION

For the foregoing reasons, I find that the Miami Correctional Facility violated the Access to Public Records Act when it failed to produce the requested documents within a reasonable time after receiving the requests.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Amy Clark