

August 24, 2005

David Burks-Bey  
DOC #872875  
P.O. Box 900  
Bunker Hill, IN 46914

*Re: Formal Complaint 05-FC-148; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction.*

Dear Mr. Burks-Bey:

This is in response to your formal complaint alleging that the Indiana Department of Correction (“DOC”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for access to public records.

#### BACKGROUND

On July 25, 2005 you filed a complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-148. Your complaint very simply states that you have not received a response to your request for records. Your request for records is dated July 5, 2005.

Robert D. Bugher, Legal Services Director for the DOC, responded to your complaint by letter dated August 8, 2005. A copy of that response is enclosed for your reference. Mr. Bugher indicated that the DOC received your request on July 6, 2005. The DOC responded to your request on August 3, 2005. Mr. Bugher provided a copy of that response.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The DOC is a public agency for purposes of the APRA. Therefore, the DOC was required to respond to your request within seven days of its receipt on July 6, 2005. The DOC received your request on July 6, 2005; therefore, it should have responded by July 13, 2005. The agency DOC did not respond until August 3, 2005. The agency failed to provide a response within seven days of receiving your request. The DOC's failure to provide you with a response within the required timeframe is a violation of the APRA.

Additionally, in its letter to this Office the DOC explained that it does not maintain all of the records you seek; specifically, it does not have lists of state forms and computer programs. The DOC also indicated that some of the information, including copies of state forms, is available for your review in the law library at the Miami Correctional Facility.

The DOC correctly asserted, in its letter to this office, that it is not required to create a list that does not already exist. The DOC does not have the duty to provide you with documents that the DOC does not maintain. It does have the duty to inform you of whether it does not have the records you seek. However, the DOC's August 3<sup>rd</sup> response to you failed to indicate that it did not maintain the lists that you seek, only that you could review any available information in the library. The response to this Office was well written; the response to your request should have been as clear.

#### CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Correction violated the Access to the Public Records Act when it failed to respond to your written request for access to public records within seven days of receipt of the request.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Robert D. Bugher