



STATE OF INDIANA

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September 14, 2005

Adrian L. Broome
DOC # 957185
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-165; Alleged Violation of the Access to Public Records Act by the Ombudsman Bureau

Dear Mr. Broome:

This is in response to your formal complaint alleging that the Ombudsman Bureau ("Bureau") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records.

BACKGROUND

You state in your complaint, filed August 16, 2005, that the Bureau did not respond to your request for public records. You did not provide a date upon which you filed your request with the agency.¹ You state that you requested records regarding the investigation of a complaint that you filed with the Ombudsman Bureau, including the names of the persons conducting the investigation, the names of people questioned, the names of officers "on C.R.'s" at the facility. You stated that you wanted full names rather than initials. Finally, you state "Plus sexual threats to me. The problem still persists, the complaint [filed with the Bureau] came back April 20, 2005 and numbered." I do not know what you intended by these statements. Since the filing of your APRA complaint you filed an additional formal complaint form, on September 7, 2005, regarding the same APRA complaint. As the second form did not raise any new issues regarding your APRA request it has been consolidated into this opinion. You also sent additional correspondence to this office regarding the complaint that you filed with the Bureau. That complaint was not part of your APRA complaint and was therefore forwarded to the Ombudsman Bureau.

Charlene Navarro, Director of the Ombudsman Bureau, responded to your formal complaint by letter dated August 17, 2005. A copy of that letter is enclosed for your reference. Ms. Navarro indicated that the Bureau did not receive a public record request from you. She stated that the Bureau received two letters from you. One letter was dated April 19, 2005 and

¹ The only dates that you provided relate to the filing of your complaint with the Ombudsman Bureau on April 6, 2005. The Bureau responded to your complaint with that office on April 20, 2005.

stated, "The name of the officials I've talked to and can agree if not check records even grievances. . ." you then listed certain officials. Ms. Navarro indicates that this letter does not comply with IC 5-14-3-3(a). She also asserts that, pursuant to IC 4-13-1.2-7(a)(3) the names of complainants are confidential and that communication between the ombudsman and any person is privileged.

ANALYSIS

The duties of the Public Access Counselor include responding to informal inquiries and issuing advisory opinions regarding the public access laws. IC 5-14-4-10. The public access laws are the Open Door Law, IC 5-14-1.5 and the Access to Public Records Act, IC 5-14-3, or any other state statute or rule governing access to public meetings or public records. IC 5-14-4-3. The authority of my office does not extend to the review of the Bureau's actions regarding complaints filed with that office. Therefore, to the extent that your complaints and correspondence invite me to review the actions of the Bureau beyond the Bureau's responsibilities under the public access laws, I must decline.

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). If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied. A public agency may not deny or interfere with the exercise of the right stated in 5-14-3-3(a). IC 5-14-3-3(b).

The Bureau is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(l)(1). Accordingly, any person has the right to inspect and copy the public records of the Bureau during regular business hours. IC 5-14-3-3(a).

Reasonable Particularity

When any person makes a request for records from a public agency, he must "identify with reasonable particularity the record being requested." IC 5-14-3-3(a). While the phrase "reasonable particularity" appears to be clear, were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary meaning. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. App. 1992). "Particularity" is defined as "the quality or state of being particular as distinguished from universal." *Merriam-Webster Online*, (visited September 15, 2005) <<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=particularity&x=13&y=15>>.

Statutory interpretation also requires that one construe the phrase "reasonable particularity" in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. App. 1991). Since the APRA favors disclosure and the burden of proof for nondisclosure is on the public agency, the agency should contact the requestor for more information if it is necessary to respond to a request that is not reasonably particular.

My staff attorney reviewed your April 19th letter to the Bureau. The letter appears to be a complaint regarding the handling of a complaint that you filed with the Bureau. In the middle

of the letter you state, “The name of the officials I’ve talked to and can agree if not check records even grievances. . .”. This does not appear to be a request for records; you do not request that you would like records regarding these persons or in any way indicate what you would like the Bureau to do regarding the persons who you spoke with.

If you intended this letter to be a request for records, it was not reasonably particular. If the letter was anything more than a complaint regarding the handling of your complaints filed with the Bureau, the agency was not able to recognize it as such. You did not make any request other than to tell the agency to check the records. Your letter appears to be more of a request that the Bureau review your complaints rather than a request to produce documents.

Requirement to Respond within Seven (7) Days of Receipt of Request.

Under the APRA the Bureau is required to respond to your request for records within seven (7) days of receipt of your request. If the Bureau had received your request and failed to respond within seven (7) days of receipt, then a violation of APRA would have occurred. In this instance the Bureau denies having received a request for records from you. The most the agency could surmise is that you might have intended the April 19th letter to be a request for records. It would be difficult to label the April 19th letter to be a request for records as you did not actually request records. Therefore, I conclude that the agency did not receive a request for records from you. The Bureau’s duty to respond to a request for records does not begin until the Bureau receives a request. As the Bureau did not receive a request for records from you, it had no duty to respond and did not violate the APRA.

You may file a request for the records that you seek with the Bureau. Pursuant to IC 5-14-3-4(a)(1) a public agency may not disclose records that are declared confidential by state statute. The Bureau indicates that certain information maintained by the Bureau would be confidential pursuant to IC 4-13-1.2-7. If the Bureau denies your request for records it must cite, in the denial, to the exemption(s) authorizing the withholding of the records. IC 5-14-3-9(c)(2). The burden is on the Bureau to sustain its denial. IC 5-14-3-9(f).

CONCLUSION

For the foregoing reasons, I find that the Ombudsman Bureau did not violate the Access to Public Records Act when it did not respond to your request for records that was either not received by the agency, or was not reasonably particular enough to put the agency on notice that it had received a request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Charlene Navarro

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