

June 9, 2005

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

Re: Formal Complaint 05-FC-93; 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 denying a record. I find that the Facility violated the Access to Public Records Act when it denied your request for records of Ms. Tobin.

BACKGROUND

On a date unspecified, you requested a record regarding a Ms. Tobin. The Facility has told me that the record you had requested regarding Ms. Tobin was e-mail correspondence that the Facility contends you were not entitled to. You received a response to the Tobin request on April 20, 2005, denying the request because the Facility could not locate any statute that indicated you are entitled to view these records.

On two subsequent dates, April 25 and May 2, 2005, you requested personnel file information on various employees, including Johanna Rucker, Lynn Frye, Ms. Lorenz, and B. Williams. You specified that you sought those individuals' educational background, compensation, previous work experience, job description, training and any disciplinary action.

You filed your complaint on May 11, citing the Tobin denial letter as the reason for your belief that you would be denied the personnel file information. You admitted that you withdrew your request for the Tobin information after you received the denial letter.

I sent a copy of your complaint to the Facility. Superintendent John R. VanNatta responded in writing, a copy of which is enclosed for your reference. Superintendent VanNatta stated that the records for Ms. Tobin were denied because you had requested e-mail correspondence that you were not entitled to. He stated that you have since withdrawn your request for the Tobin e-mails. He assured me that your subsequent requests for employee records have not been denied, but the facility is in the process of compiling the requested records.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public record includes electronic mail. *See* IC 5-14-3-2(m). Personnel files of public employees may not be disclosed in a public agency's discretion, *except* that certain information *must* be disclosed. IC 5-14-3-4(b)(8). The information that must be disclosed includes all the information that you are seeking on the named individuals. *See* IC 5-14-3-4(b)(8)(A).

A public agency that receives a request for records via U.S. Mail or by facsimile is required to respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). If the public agency denies a written request for records, the denial must be in writing, and must contain a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The Facility has not complied with the APRA. The written denial of the Facility dated April 20 did not specify the exemption authorizing the withholding of the e-mail regarding Ms. Tobin. The Facility did not give me specific information regarding the nature of the e-mail, but as with any other type of public record, an e-mail public record is disclosable unless it is subject to one of the exceptions in section 4 of the APRA. The April 20 denial letter stated that the Facility could not locate a statute indicating that you are entitled to the record. Because the APRA assumes that public records are disclosable unless they are exempt from disclosure, the Facility failed to discharge the burden assigned to it by the legislature--to prove that a record is not disclosable. IC 5-14-3-1. The fact that you have now withdrawn your request for the Tobin e-mail does not excuse this violation of the APRA.

Although the Facility has indicated that it is compiling the personnel file information that you seek, it has not indicated that it had responded timely to your request for these records. If the Facility failed to respond to you within seven days by acknowledging receipt of your request and indicating how it intended to comply, the law deems your request denied. This too would have violated the APRA. It appears, however, that the Facility is in the process of compiling the records, which are clearly disclosable under IC 5-14-3-4(b)(8)(A).

CONCLUSION

For the foregoing reasons, I find that the Miami Correctional Facility violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Superintendent John R. VanNatta