

July 31, 2006

William G. Turpin
#931181
Miami Correctional Facility
P.O. Box 900
Bunker Hill, IN 46914

Re: Formal Complaint 06-FC-109; Alleged Violation of the Access to Public Records Act by the Miami Correctional Facility

Dear Mr. Turpin:

This is in response to your formal complaint alleging that the Miami Correctional Facility (“Facility”) violated the Access to Public Records Act by failing to give you the records that you requested. I find that the Facility must disclose any records it maintains that are responsive to your request, but is not required to create a record.

BACKGROUND

On June 8, 2006, you sent a request for records to the Facility. To summarize your request, you sought to obtain a copy of any and all records relating to revenues to and expenditures from the Facility’s “recreation fund.” The Facility sent you a copy of the May 2006 “Summary of Recreation Fund.” This document shows the recreation fund’s assets, receipts, and disbursements during the month of May, 2006. You told the Facility that this record was not adequate. You wrote on June 16 that the Facility had not provided you information regarding “where all the money is going, and has gone over the past years since the opening of this facility.” Your formal complaint to the Public Access Counselor followed.

I sent a copy of your complaint to the Facility. I enclose for your reference the letter from Walter E. Martin, Superintendent. Superintendent Martin stated that there is no appropriated budget for the recreation fund. The money from the fund is generated by the purchases made by offenders and others through commissary, phone calls, vending machines, etc. Expenditures from the fund are determined by the amount of funds available and all

expenditures must be for the benefit of the offender population. The Facility has a monthly statement of the beginning balance, receipts and disbursements and final balance for the month. The Facility has advised you that it can provide the individual receipts and disbursement for a month, but that may exceed several hundred pages per month. You do not want to pay for those copies, and you have told the Facility that “there must be something else.”

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). “Public record” means any material that is “created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m). The Facility is a public agency under the APRA. IC 5-14-3-2(l)(1). A public agency that is a state agency can charge a copying fee set by the department of administration, or \$.10 per page, whichever is greater. IC 5-14-3-8(c). Moreover, a public agency may require that the copying fee be paid in advance. IC 5-14-3-8(e).

While the APRA requires that a person be allowed to inspect and copy existing public records of an agency, in general, nothing in the APRA prescribes what records a public agency is required to create or maintain. Hence, nothing in the APRA requires that a public agency create or compile information into a record to satisfy a person’s request.

The Facility acknowledges that it has a Summary of Recreation Fund for months other than for May 2006. The Facility also states that it can make available the monthly summaries as well as copies of receipts for disbursements, but those receipts are quite voluminous, even for one month. The Facility apparently does not prepare a report or other record that details expenditures from the recreation fund annually or otherwise. Unless the Facility has a record and is withholding it without complying with the APRA, the Facility has not violated the Access to Public Records Act by not compiling the information you seek into a report. If you wish to receive a copy of the receipts and disbursements, the Facility may require that you pay the copying fee. Perhaps you could limit your request for copies of expenditures so that the number of responsive records is not so voluminous.

CONCLUSION

For the foregoing reasons, I find that the Miami Correctional Facility has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Superintendent Walter Martin