

August 15, 2007

Russell Price
DOC #146671
PO Box 900
Bunker Hill, Indiana 46914

Re: Formal Complaint 07-FC-208; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Price:

This is in response to your formal complaint alleging the Indiana Department of Correction ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. I find that the Department did not violate the APRA.

BACKGROUND

In your complaint you allege that on June 13, 2007 you requested from the Department access to records maintained by the Department. You specifically requested records related to religious expenditures for the Miami Correctional Facility. You submitted your complaint on July 16, and I received it on July 17, alleging you had not received a response.

The Department responded to your complaint on July 27. Robert Bugher for the Department indicated he could find no record of having received your request. He further indicated the person to whom you directed your request had not worked for the Department for two years. Mr. Bugher included with his response a response he sent to you indicating the Department would not waive copy fees. He further indicated he would await confirmation from you regarding your willingness to pay for copies before compiling records in response to your request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code §5-14-3-

1. The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. I.C. §5-14-3-9(b).

Here the Department has indicated it has no record of having received your request. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Since receiving a copy of your complaint and seeing your request for the first time, the Department has now responded.

A state agency may collect the uniform copying fee established by the department of administration. The uniform copying fee is \$.10 per page. A public agency may require the payment for copy costs to be paid in advance. I.C. §5-14-3-8. Nothing in the APRA requires a state agency to waive the copy fee absent a court order. As such, the Department has acted within its authority under the APRA in asking you to agree to remit payment before production of the records you requested.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Correction did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Robert Bugher, Indiana Department of Correction