

August 30, 2007

Derek Morris
Pendleton Correctional Facility
PO Box 30
Pendleton, Indiana 46064

Re: Formal Complaint 07-FC-228; Alleged Violation of the Access to Public Records Act by the Marion County Jail II, Corrections Corporation of America

Dear Mr. Morris:

This is in response to your formal complaint alleging the Marion County Jail ("Jail") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. The Jail referred me to the Corrections Corporation of America ("CCA") for response to the complaint, as the Jail indicated CCA is under contract to operate the Jail II and as such is responsible for responding to such requests. I find that if the Marion County Jail did not receive your request, it did not violate the Access to Public Records Act.

BACKGROUND

In your complaint you allege that on June 6, 2007 you requested from the Jail II copies of the attorney visit log with dates of visits by your attorney from April 2006 to January 2007. You filed your complaint on July 31.

Upon receipt of your complaint I called the Jail's public information officer who asked me to direct your complaint to CCA, the entity who operates the Jail II. As the operator of the Jail II, the Jail indicates it is CCA's responsibility to respond to such a request.

The Jail responded to your complaint by letter from Heidi Marshall of CCA dated August 17. Ms. Marshall indicates she has no record of having received the request. She includes with her response copies of the logs you have requested but indicates they are not certified because she cannot be certain the attorney signed in and out on every visit.

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 Jail 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 Jail 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). The Jail referred me to CCA for response to your complaint. While I understand CCA is contractually obligated to the Jail to respond to such requests, this opinion refers to the Jail as the public agency by whom the records were created.

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 Jail indicates it did not receive your request. A public agency cannot respond to a request it does not receive, so I cannot find that the Jail violated the APRA by not responding to a request it did not receive. As a result of your complaint, CCA has submitted to me copies of the records you request, which I am now enclosing with this opinion. CCA indicates it cannot certify the documents because it cannot be certain the established protocol for keeping records of visits was followed for every visit. There is no provision in the APRA requiring a public agency to certify records pursuant to a request.

CONCLUSION

For the foregoing reasons, I find that if the Marion County Jail did not receive your request, it did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Heidi Marshall, Corrections Corporation of America
Marion County Sheriff's Department, Jail Division