

September 6, 2007

Marvin Taylor
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-240; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction Reception-Diagnostic Center

Dear Mr. Taylor:

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

BACKGROUND

You do not make specific allegations in your complaint but rather attach several documents, so I am left to assume what I believe to be your complaint. I believe you submitted a request for access to records to the Center on July 19, 2007. With it you submitted an affidavit of indigence. Receiving no response, you submitted your complaint to this office on August 7, and I received it on August 10.

The Center responded to your complaint on August 27, indicating the Center does not maintain any records responsive to your request. The Center enclosed a copy of a letter dated August 13 sent to you to inform you how to obtain the records you requested.

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 Center 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 Center 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 Center responded to your request on August 13. Because I do not know when the Center received the request, I cannot say definitively whether the response was untimely. If, however, the Center sent the response to you later than seven days after receipt of your request, the response was untimely.

Because the Center does not maintain the records you request, the Center is under no obligation to produce those records. The Center did provide you with information regarding how you may obtain the records you request.

To the extent your complaint regards the fees associated with the copies you requested, the APRA provides that public agencies may charge a copying fee. In most cases, state agencies may charge \$.10 per page I.C. §5-14-3-8(c). Public agencies may also request payment in advance for copies. I.C. §5-14-3-8(e). There are instances, however, when the General Assembly or a court has provided authority for public officials to charge a copying fee different from the \$.10 per page or actual cost. I.C. §5-14-3-8(f).

By enclosing copy of an affidavit of indigence, I understand you claim to be entitled to at least one copy of a public record at no charge. There is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there are instances when a court will issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your request to the Center, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge.

CONCLUSION

For the foregoing reasons, I find that while the Center's response may have been untimely, it did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Dave Bonner, Assistant Superintendent