

November 26, 2007

Clyde Piggie
DOC #933044
PO Box 30
Pendleton, Indiana 46064

Re: Formal Complaint 07-FC-325; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Piggie:

This is in response to your formal complaint alleging the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to personnel records of Facility employees. A copy of the Facility's response to your complaint is enclosed. It is my opinion that the Facility did not violate the APRA by denying you access to inspect the requested records nor by denying you copies at no charge. It is further my opinion that the Facility may not deny access to the personnel records based on I.C. §5-14-3-4(b)(10).

BACKGROUND

In your complaint you allege that you submitted a request to the Facility for copies of personnel records of employees of the Facility. You received a response from the Facility dated September 25, 2007 indicating the records would not be disclosed to you because the "Legal Division at Central Office" has determined that releasing such information would jeopardize the safety and security of a record keeping or security system. You sent your complaint on October 23, and I received it on October 25.

The Facility responded to your complaint by letter dated October 26. The Facility contends that for security reasons the Facility will only allow inspection of records at the Administration Building. Since you are incarcerated and do not have access to the Administration Building, you may not inspect the records. The Facility cites three *Opinions of the Public Access Counselor* (04-FC-43; 04-FC-155; and 05-FC-182) affirming this position. The Facility further contends that the Facility will not disclose personnel records of staff because the Department of Correction believes doing so could jeopardize the safety and security of a record keeping or security system.

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." I.C. §5-14-3-1. The Facility 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 Facility 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 public agency shall either provide the requested copies to the person making the request or allow the person to make copies on the agency's equipment or on the person's own equipment. I.C. §5-14-3-3(b). If a person is entitled to a copy of a public record under the APRA and the public agency that is in possession of the record has reasonable access to a machine capable of reproducing the public record, the public agency must provide at least one copy of the public record to the person. I.C. §5-14-3-8(e).

Here, you have requested copies of records maintained by the Facility. For security reasons, the Facility will allow inspection of the records only at the Administration Building. This issue has been previously addressed by the public access counselor:

"Circumstances may exist where physical inspection of a record is not practical or even possible, and reasonable access can only be accomplished through production of a copy of the record. Such is the case here. As an incarcerated offender, it is not possible for you to appear at a public agency during its normal business hours and inspect the records of that agency. *See* I.C. §5-14-3-3(a). Your status is no less significant when seeking to inspect the records of the facility where you are incarcerated." *Opinion of the Public Access Counselor* 04-FC-43.

However, the Facility cannot use this reasoning to completely deny you access to the records. You may request copies of the requested records, at the established cost for copies of records, pursuant to I.C. §5-14-3-8(e). The Facility may require advance payment prior to providing the records. I.C. §5-14-3-8(e). The Facility has indicated that you claim to be indigent when requesting copies. 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, a court may issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your requests to the Facility, you have not provided any statutory or other legal authority that would have authorized you to obtain copies at no charge.

Regarding the Facility's assertion that the personnel records of Facility employees may be excepted from disclosure under the APRA, I have previously addressed this in *Opinion of the Public Access Counselor* 07-FC-222. The Facility claims the information you request regarding the employees is exempt from disclosure under I.C. §5-14-3-4(b)(10), which exempts documents which contain administrative or technical information that would jeopardize a record keeping or

security system. The Indiana Court of Appeals addressed this exception in *City of Elkhart v. Agenda*, 683 N.E.2d 622 (Ind. Ct. App. 1997). There the requested information was in the form of telephone numbers. The court did not agree that telephone numbers were technical or administrative information, defining "technical" as "of or relating to technique" and "marked by or characteristic of specialization" and defining "administrative" as "of or relating to administration." *Id.* at 626-627. Similarly, the information requested here is not technical or administrative. Further, certain personnel information is specifically required to be disclosed under I.C. §5-14-3-4(b)(8), when the request is particularized by employee name. *Opinion of the Public Access Counselor 07-FC-222*. To the extent your request is limited to the information required to be disclosed pursuant to I.C. §5-14-3-4(b)(8), it is my opinion the Facility cannot invoke I.C. §5-14-3-4(b)(10) to withhold that information.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: David W. Barr, Pendleton Correctional Facility
Robert Bugher, Indiana Department of Correction