

November 29, 2007

Luther Gray
CIF, PO Box 601
Pendleton, Indiana 46064

Re: Formal Complaint 07-FC-332; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Gray:

This advisory opinion 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 denying you access to records. It is my opinion that the Department has a duty to either provide you access to the records you have requested or to deny access in writing with a statement of the exemptions authorizing withholding of the records from disclosure.

BACKGROUND

In your complaint you allege that you mailed a request for copies of several records to the Department. You received a response from the Department dated October 2, 2007 indicating the Department would ask the specific facility to review the records to determine whether any records existed responsive to your request. Hearing no further response, you mailed this complaint on October 25, and I received it on October 30.

The Department did not respond to your complaint at my invitation to do so.

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 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 “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

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 and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the Department responded to your request, indicating the request was being directed to the specific facility to determine whether they maintained any responsive records. While the APRA does not provide a deadline for production of records pursuant to a request, the Department must produce the requested records within a reasonable period of time or provide you with a written denial of access pursuant to I.C. §5-14-3-9.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department has a duty to either provide you access to the records you have requested or deny access in writing with a statement of the exemptions authorizing withholding of the records from disclosure.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Robert Bugher, Indiana Department of Correction