

November 29, 2007

Michael Hunt  
PO Box 30  
Pendleton, Indiana 46064

*Re: Formal Complaint 07-FC-334; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility*

Dear Mr. Hunt:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to your complaint is enclosed for your reference. It is my opinion the Facility did not violate the Access to Public Records Act.

#### BACKGROUND

In your complaint you allege that you sent on September 9, 2007 a request to the Facility for a copy of several records. Specifically, you requested records related to recreational activities at the Facility. You allege that Lisa Ash of the Facility verbally denied your request on October 24. You mailed this complaint on October 28, and I received it on October 30. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted. You further request attorney fees, something the public access counselor has no authority to grant.

The Facility responded to your complaint by letter dated November 14 from Ms. Ash. Ms. Ash contends you have not spoken with her regarding a request for access to records. Regarding your specific request, Ms. Ash indicates the Facility has not issued any memorandum regarding the recreational activity and as such maintains no records responsive 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." 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 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).

Here the Facility contends it did not receive your request for records. If the Facility had received your request, it would have a duty to respond to the request within seven days of receipt. I.C. §5-14-3-9(b). Regarding the records you request, the Facility indicates such records do not exist. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

#### 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: Lisa Ash, Recreation Coordinator, Pendleton Correctional Facility