

March 11, 2008

Scottie Edwards  
DOC #112192  
PO Box 500  
Tell City, Indiana 47586

*Re: Formal Complaint 08-FC-58; Alleged Violation of the Access to Public Records Act by the Branchville Correctional Facility*

Dear Mr. Edwards:

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

#### BACKGROUND

You allege that you submitted requests to the Facility dated January 14 and 28, 2008 for a copy of video footage from a camera in the Facility. The Facility denied your request. You mailed this complaint on February 12, and I received it on February 15. You allege the Facility denied you access to a public record.

The Facility responded to your complaint by letter dated February 25 from Nick Zellers. Mr. Zellers indicates that allowing an offender to view footage from the camera would disclose where and how the cameras are positioned.

#### ANALYSIS

The public policy of the APRA states, "(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 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).

The Facility claims the videotape recordings of the Facility are exempt from disclosure because they would disclose where and how the cameras are positioned. Pursuant to I.C. § 5-14-3-4(b)(10), records which contain administrative or technical information that would jeopardize a record keeping or security system are excepted from disclosure. Because the public policy of the APRA requires liberal construction in favor of disclosure (*See* I.C. § 5-14-3-1), exemptions to disclosure must be construed narrowly. *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995). But a liberal construction of the APRA does not mean the exemptions set forth by the General Assembly should be contravened. *Hetzel v. Thomas*, 516 N.E.2d 103, 106 (Ind. Ct. App. 1987).

This office has addressed the security system exemption to disclosure (*See* I.C. § 5-14-3-4(b)(10)) in *Opinion of the Public Access Counselor 03-FC-126*. There, the issue related to surveillance videotapes made at the Miami Valley Correctional Facility. Counselor Hurst referred to *City of Elkhart v. Agenda: Open Government*, 683 N.E.2d 622 (Ind. Ct. App. 1997), which involved telephone numbers of City employees. The City declined to release the telephone numbers based on the exemption found in I.C. § 5-14-3-4(b)(10) and based on the prior misuse of the Emergency 911 system to determine the owners of telephone numbers. The court said,

[A]ny prior alleged misuse or speculated future misuse of information *which is innocuous on its face* is irrelevant. Section 4(b)(10) provides a discretionary exception for public records containing a “type” of information due to its nature and not because of a speculated “use” of the information would jeopardize a record keeping or security system. *City of Elkhart*, 683 N.E.2d at 627 (emphasis added).

As Counselor Hurst noted, the telephone numbers being sought were not part of the security system their disclosure was said to endanger. About the surveillance videotapes at issue in *Opinion of the Public Access Counselor 03-FC-126*, though, Counselor Hurst opined the following:

Here, unlike the telephone numbers at issue in *City of Elkhart*, the videotape cannot be characterized as ‘innocuous’ or not of the “type” of technical or administrative information that due to its nature if disclosed would jeopardize the record keeping and security system the Department utilizes at the Miami Valley Correctional Facility. The videotape is part and parcel of the security system utilized by that facility. . . it also represents information of the sort fully contemplated by the legislature when it codified the security system exemption. . . The quality of the videotape and clarity of images projected may certainly be characterized as “technical information” regarding the security system that, if disclosed, could jeopardize that system. *Id.*

In accepting the argument that the surveillance video was excepted from disclosure under I.C. § 5-14-3-4(b)(10), Counselor Hurst in *Opinion of the Public Access Counselor 03-FC-126* said the following:

From such information as the camera angles an offender may determine from the videotape where they can hide from camera detection, and from that information avoid monitoring and commit infractions or offenses against corrections personnel and other inmates. The videotape may also reveal the operational times and operation status of specific cameras. In my opinion, such information relating to the administration of the security system would, if disclosed, jeopardize the security system and render the security provided by the cameras non-existent. *Id.*

Here, the issue is nearly identical. For the reasons provided by Counselor Hurst in the previously cited opinion, I agree that disclosure of the surveillance video maintained by the Facility could jeopardize the security system at the Facility.

#### 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: Nick Zellers, Branchville Correctional Facility