



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 29, 2010

Mr. Bruce A. Brightwell
1212 State St.
New Albany, IN 47150

*Re: Formal Complaint 10-FC-267; Alleged Violation of the Access to
Public Records Act by the Indiana Department of Correction*

Dear Mr. Brightwell:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the DOC's response is enclosed for your reference.

BACKGROUND

According to your complaint, DOC denied your request for access to DOC Policy 02-03-101, titled "Searches and Shakesdowns" [sic] (the "Policy"). You are an attorney who often visits DOC facilities and would like to review the Policy. You argue that DOC cannot deny you access to a copy of a policy that it subjects you to when you visit DOC facilities.

In response to your complaint, DOC Chief Counsel Robert Bugher claims that the Policy is exempt from disclosure pursuant to I.C. § 5-14-3-4(b)(10), which excepts from disclosure at the discretion of the public agency administrative or technical information related to a facility's security system. Mr. Bugher states that the Policy's release could jeopardize the safety and security of DOC's correctional facilities if offenders or visitors gain knowledge of the capabilities or limitations of DOC's search techniques.

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." I.C. § 5-14-3-1. DOC is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m).

Accordingly, any person has the right to inspect and copy DOC's public records 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).

Subsection 4(b)(10) of the APRA provides that "[a]dministrative or technical information that would jeopardize a record keeping or security system" shall be excepted from the disclosure requirements of the APRA at the discretion of the public agency. Mr. Bugher avers that releasing the Policy would jeopardize the security of DOC facilities by exposing vulnerabilities in DOC's search techniques. In my opinion, DOC has sustained its burden to show that the Policy's disclosure could put DOC's security systems at risk. As such, DOC did not violate the APRA by denying your request.

While I appreciate that you would like to inspect the Policy due to the fact that you are subject to it while visiting DOC facilities, the APRA does not contain any applicable language that would overrule the DOC's discretion under subsection 4(b)(10).

CONCLUSION

For the foregoing reasons, it is my opinion that DOC did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Robert D. Bugher