



STATE OF INDIANA

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December 1, 2010

Mr. Jeffery W. Blackmon
DOC # 935563
4490 W. Reformatory Rd.
Pendleton, IN 46064-9001

Re: Formal Complaint 10-FC-270; Alleged Violation of the Access to Public Records Act by the Indiana Department of Administration Ombudsman Bureau

Dear Mr. Blackmon:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Administration Ombudsman Bureau ("Bureau") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Bureau's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Bureau Director Charlene Burkett did not respond to your September 27, 2010, inquiry regarding whether or not the Bureau required a specific form for records requests. On October 7th and 8th, respectively, you filed two requests with the Ms. Burkett for access to certain records. You also allege that Ms. Burkett refused to speak with you while she was visiting the facility in which you are incarcerated and, instead, requested that you communicate with her in writing.

Ms. Burkett responded to your complaint by forwarding her written response to you. Her response is dated October 12th. In denying you access to records regarding certain Ombudsman Bureau complaints, Ms. Burkett cited to subsection 4(b)(23) of the APRA due to the fact that the records contain sensitive information that could compromise the safety and security of a correctional facility. Ms. Burkett granted your request for a copy of the Bureau's annual report and agreed to provide you with a copy of the report upon receipt of the appropriate fees. Finally, Ms. Burkett denied you a copy of records for Bureau budget information because those records are maintained by the State Budget Agency.

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. The Bureau does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Bureau’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Moreover, it is my understanding based on your contact information and mailing address that you are confined in a penal institution as the result of a conviction of a crime. If that is true, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information related to employees of correctional facilities, specifically excepting the following:

- Records requested by an offender that:
 - (A) contain personal information relating to:
 - (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) the victim of a crime; or
 - (iii) a family member of a correctional officer or the victim of a crime; or
 - (B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23). Thus, to the extent you requested records that concern or could affect the facility’s security, the Bureau acted within its discretion by denying access to such records.

With respect to your request for budget information, if the Bureau does not maintain records regarding its budget, the Bureau did not violate the APRA by denying that element of your request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61; see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

Finally, I note that the APRA permits a public agency to charge a fee for copies of public records. I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. IC 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. Consequently, the Bureau acted in accordance with the APRA by granting your request for a copy of the Bureau’s annual report subject to receiving applicable fees from you.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Charlene Burkett