



# STATE OF INDIANA

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Mr. Michael J. Shepard  
DOC # 181080  
Putnamville Correctional Facility  
1946 W. U.S. Hwy. 40  
Greencastle, IN 46135

*Re: Formal Complaint 10-FC-271; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Shepard:

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"), I.C. § 5-14-3-1 *et seq.* The DOC's response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that DOC failed to respond to your challenge to the accuracy of DOC records, which you filed under I.C. § 4-1-6-5 *et seq.* In response to your complaint, DOC Chief Counsel Robert Bugher states that to the extent inaccurate information exists, he will ask his staff to review the matter and address it appropriately. Mr. Bugher also enclosed records that you requested related to your current status on the sex and violent offender website, although he notes that such information is located within a database maintained by the Vanderburgh County Sheriff rather than the DOC.

## 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 DOC 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 DOC'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).

Here, it does not appear that the DOC denied you access to existing records. Rather, you claim that the DOC has failed to respond to or investigate your request to challenge allegedly incorrect information contained within the DOC database and DOC sex and violent offender registry. The Indiana Fair Information Practices Act (“FIPA”), I.C. § 4-1-6-1 *et seq.*, governs personal information records systems that are maintained by state agencies. Section 5 of FIPA prescribes procedures for individuals challenging inaccurate information contained within agency records:

**Challenge of information by data subject; notice; minimum procedures**

Sec. 5. If the data subject gives notice that he wishes to challenge, correct or explain information about him in the personal information system, the following minimum procedures shall be followed:

(a) the agency maintaining the information system shall investigate and record the current status of that personal information;

(b) if, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained, it shall be promptly corrected or deleted;

(c) if the investigation does not resolve the dispute, the data subject may file a statement of not more than two hundred (200) words setting forth his position;

(d) whenever a statement of dispute is filed, the agency maintaining the data system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly mark that it is disputed and supply the statement of the data subject along with the information;

(e) the agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request;

(f) following any correction or deletion of personal information the agency shall, at the request of the data subject, furnish to past recipients notification delivered to their last known address that the item has been deleted or corrected and shall require said recipients to acknowledge receipt of such notification and furnish the data subject the names and last known addresses of all past recipients of the uncorrected or undeleted information.

I.C. § 4-1-6-5.

It is my understanding based on Mr. Bugher’s response that DOC plans to investigate your challenge and respond accordingly. FIPA does not appear to provide timelines for such an investigation or corrective action by agencies, but I trust that the DOC will process your challenge as soon as practicable. If you continue to view DOC’s response as unsatisfactory, you would likely need to retain counsel to file a suit compelling DOC’s compliance with I.C. § 4-1-6-5 because the statute does not appear to provide remedies for an agency’s failure to comply. I note that rights of action contained in I.C. § 5-14-3-9 and I.C. § 5-14-1.5-7 are limited to alleged violations of the Access to Public Records Act and the Open Door Law, respectively.

It is also noteworthy that Counselor O’Connor opined in a 2002 opinion that “it is clear that the FIPA does not supersede the provisions of the APRA.” *Op. of the Public*

*Access Counselor 02-FC-34.* Consequently, to the extent that any of the records you seek access to pursuant to FIPA are classified as confidential or nondisclosable under the APRA, DOC need not provide those to you.

#### CONCLUSION

For the foregoing reasons, it is my opinion that DOC 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, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Robert D. Bugher