



# STATE OF INDIANA

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March 17, 2010

Mr. Sammie L. Booker  
DOC #12710  
One Park Row  
Michigan City, IN 46360

*Re: Formal Complaint 10-FC-37; Alleged Violation of the Access to Public Records Act by the Indiana State Prison*

Dear Mr. Booker:

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

## BACKGROUND

In your complaint, you allege that the Prison violated the APRA by failing to provide you with your requested records within a reasonable time. In her response on behalf of the Prison, Pam James of Administrative Services claims that she forwarded your request to another department for response and was under the impression that you already received your records. It is my understanding that the Prison has now made the records available to you.

## 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 Prison does not dispute that it is a public agency subject to the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the Prison'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).

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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Prison appears to have responded to your request within the applicable timeframe. You allege, however, that the Prison failed to produce your requested records within a timely manner after it responded to your written request.

There are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45.*

Here, it appears the Prison would have produced your records in a more timely fashion if not for an administrative oversight. The Prison maintains that it did not intend to deny you access to the records. I trust that the Prison's acknowledgment of its error and immediate production of records satisfies your complaint. Moreover, while I cannot excuse the Prison of its obligations under the APRA, I would encourage you to communicate with the Prison regarding the status of any future requests before filing a complaint with this office.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Prison failed to produce your records within a reasonable time but did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Pam James