



# STATE OF INDIANA

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April 8, 2010

Mr. Pierre Q. Pullins  
1227 N. Rural Street  
Indianapolis, IN 46201

*Re: Formal Complaint 10-FC-69; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Pullins:

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

## BACKGROUND

According to your complaint, you have requested parole records from the DOC regarding Bobby Kern. You further claim that Mr. Kern is a candidate for public office who testified at a hearing conducted by the Indiana Election Commission regarding the contents of his parole agreement. You believe Mr. Kern's agreement should be released in order to test the veracity of his testimony.

My office forwarded a copy of your complaint to the DOC. Robert D. Bugher, legal services director for the DOC, denies that the DOC violated the APRA. Mr. Bugher claims that parole records are exempt from disclosure pursuant to 210 Ind. Admin. Code 1-6-2(3)(C).<sup>1</sup>

## 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-

<sup>1</sup> I note that DOC cited to 210 I.A.C. 1-6-2(3)(E) in its response, but it is clear from the surrounding narrative that DOC intended to cite to subsection 2(3)(C) rather than 2(3)(E).

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).

The DOC also does not dispute that the records you have requested are public records. Rather, the DOC argues that the records are exempt from disclosure due to the DOC's administrative rules. The APRA states that a public agency "may not" disclose records "declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute." I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the DOC may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as "confidential information," including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). The DOC classified the records you seek as information that, if released, might result in physical harm to that person. 210 I.A.C. 1-6-2(3)(C). The DOC maintains that it does not release parole information because doing so might "lead to harassment of the parolee by self-styled vigilantes." Based on this information, it is my opinion that the exemption cited by the DOC is applicable to the records you requested and, therefore, the DOC did not violate the APRA when it denied your request. *See also Opinion of the Public Access Counselor 05-FC-40.*

#### CONCLUSION

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

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Robert D. Bugher