



# 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](http://www.IN.gov/pac)

March 18, 2010

Mr. David Bellamy  
DOC # 862113  
New Castle Correctional Facility  
New Castle, IN 47362

*Re: Formal Complaint 10-FC-74; Alleged Violation of the Access to  
Public Records Act by the New Castle Correctional Facility*

Dear Mr. Bellamy:

This advisory opinion is in response to your formal complaint alleging the New Castle Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, my opinion is that the Facility did not violate the APRA.

## BACKGROUND

According to your complaint, you allege that you requested access to records including the "full/complete name(s) of every GEO/IDOC employee currently employed at [the Facility]" and the "current rank, title, and salary of every GEO/IDOC employee currently employed at [the Facility]." You further state that Mike Smith, executive assistant at the Facility, denied your request and cited to Ind. Code § 5-14-3-2.1 as the authority for doing so. You disagree with Mr. Smith's position.

My office forwarded a copy of your complaint to the Facility for a response. Bruce B. Paul, an attorney for Mr. Smith, responded on his behalf. Mr. Paul claims that the Facility is not a public agency subject to the APRA. Moreover, even if the Facility were subject to the APRA, the records you have requested are confidential under Ind. Code § 5-14-3-4(b)(23).

## ANALYSIS

Here, it appears the Facility is not subject to the APRA. The Facility is operated by a private company ("GEO") that the Indiana Department of Correction ("DOC") contracted with to manage it. Under the contract, DOC pays GEO a set sum of money

in exchange for its services. The payment is not based on any entity's tax revenues or receipts. Based on this information, the Facility appears to be exempt from the APRA's requirements. *See* I.C. § 5-14-3-2.1.

Even if the Facility is subject to the APRA, however, it is my opinion that the APRA would have permitted the Facility to deny your request. It is my understanding based on the Facility's assertion and based on your mailing address that you are confined in a penal institution as the result of the conviction for a crime. As such, 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 are requesting personal information relating to a correctional officer or family member of a correctional officer or records that concern or could affect the facility's security, the Facility acts within its discretion when it denies access to such records. The Facility bears the burden of proof to sustain the denial. *See* I.C. § 5-14-3-1. In my opinion, the Facility will be able to bear that burden.

Moreover, the APRA provides a discretionary exception to disclosure for most personnel file information. While certain personnel file information must be disclosed, the exception provides that the subdivision requiring such disclosure "does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name." I.C. § 5-14-3-4(b)(8). In other words, the Facility is not required to provide you with the requested information because you have requested the information generally on employees of the facility. *See Opinion of the Public Access Counselor 04-FC-98.*

## CONCLUSION

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

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Bruce B. Paul