



STATE OF INDIANA

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August 10, 2011

Mr. Mark A. Jenkins
5124 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 11-FC-188; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Jenkins:

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"), Ind. Code § 5-14-3-1 *et seq.* Michael Pavese, Policy Manager, responded on behalf of the DOC. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a written request to the DOC on July 11, 2011 for copies of any and all changes made to classification policy # 01-04-101, all executive directives relative to classification policy # 01-040-101, the new criteria for security levels 2 and 3, the criteria for classifications of F3 and F5, the new listings of all level 2 and level 3 facilities, any information on the S.T.O.P program, and the criteria for work release and the prep program. As of August 2, 2011, the date you filed your complaint with the Office of the Public Access Counselor, you allege that DOC has not responded to your request.

In response to your formal complaint, Michael Pavese advised that he responded to your July 11, 2011 request within seven days as required by the APRA. Mr. Pavese provided a copy of the July 14, 2011 correspondence that served as the DOC's response. I included a copy of the July 14, 2011 correspondence for your review. Pavese response provided that all of the documents you were requesting were available at the Offender Law Library at the facility where you were housed. He further provided that if the information you requested was not available at the Offender Law Library, you should contact the Facility Policy Coordinator, who would be able to provide the information. Pavese advised that he was attempting to save you the cost of having the records copied by providing readily available, cost-free alternatives.

ANALYSIS

The public policy of the APRA states that “(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.” *See* I.C. § 5-14-3-1. The DOC is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Thus, if the DOC failed to respond to your written request within seven days of receiving it, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Here, there is a factual dispute as to whether the DOC responded to your request. In your complaint, you allege that the DOC failed to respond to your July 11, 2011 records request. The DOC provides that they responded to your request, in writing, on July 14, 2011.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. If the DOC intended to deny your written request by not responding to it within seven (7) days of receiving, it acted contrary to section 9 of the APRA. However, if the DOC responded to your request on July 14, 2011, then the DOC fulfilled its obligations under the APRA.

In regards to the substance of the DOC’s response, the APRA provides that public agencies may charge a copying fee. *See* I.C. § 5-14-3-8. For state agencies, the Indiana Department of Administration sets the photocopying fee at the average cost per copy or \$0.10 per page, whichever is greater. *See* I.C. § 5-14-3-8(c). Currently, it is the policy of the Department of Administration that the copying fee is \$0.10 per page. Public agencies may also request payment in advance for photocopies. *See* I.C. § 5-14-3-8(e).

Mr. Pavese provided that the records responsive to your request are made readily available, free of charge, at the Offender Law Library at the facility where you are housed. He further advised that if the information you requested was not available at the Offender Law Library, you should contact the Facility Policy Coordinator, who would be able to provide the information at no cost. Mr. Pavese stated his intent in providing the alternatives was to save you the cost of having the DOC produce copies of the documents you requested. If you find these alternatives unsatisfactory, you should inform Mr.

Pavese so he can provide you the cost of having the documents copied. As such, I do not find that the DOC violated the APRA when it provided you with readily accessible, cost-free alternatives for inspecting and copying the documents you requested with the intent of preventing you from having to pay the fees associated with having the records copied.

CONCLUSION

For the foregoing reasons, it is my opinion that if the DOC did not respond to your written request, its failure to deny your request in accordance with subsection 9(c) violated the APRA. If, however, the DOC responded to your request on July 14, 2011, it did not violate the APRA. As to the substance of the DOC's response, it is my opinion that the DOC did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and "H".

Joseph B. Hoage
Public Access Counselor

cc: Michael Pavese, Policy Manager