



STATE OF INDIANA

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August 23, 2011

Mr. Larry E. Kuhn
DOC # 894858
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaints 11-FC-201; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Kuhn:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("PCF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* David W. Barr responded on behalf of the PCF. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on July 29, 2011 you submitted a written request to the PCF for documentation showing when and where Mr. Butts acquired a Bachelors Degree. Mr. Barr responded to your request on July 29, 2011 in writing. Mr. Barr acknowledged receipt of your request and provided the PCF would respond within fourteen (14) calendar days. Thereafter, Mr. Barr denied your request in writing pursuant to I.C. § 5-14-3-4(23).

In response to your formal complaint, Mr. Barr advised that the denial was made pursuant to I.C. § 5-14-3-4(b)(23)(A)(i). Mr. Barr further provided that that the request could have been denied as the PCF did not have records responsive to your request.

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 PCF 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 PCF'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). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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). 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 PCF responded to your request within the seven-day time period required by the APRA.

The APRA provides a number of categories of records which may be disclosed by an agency at the agency's discretion. A listing of such records may be found in I.C. § 5-14-3-4(b). One group of records which may be disclosed at the discretion of the agency, which the PCF has cited, is 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 of 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).

The APRA defines "offender" as "a person confined in a penal institution as the result of the conviction for a crime." *See* I.C. § 5-14-3-2(i). Because you are an offender, the PCF may withhold from disclosure records that contain personal information relating to a correctional officer. *See* I.C. § 5-14-3-4(b)(23)(A)(i). The PCF contends that I.C. § 5-14-3-4(b)(23)(A)(i) is applicable as Mr. Butts is a correctional officer as defined by I.C. § 5-10-10-1.5. Based on the information provided by PCF, the records you have requested would be excepted from disclosure based on this provision of the APRA.

CONCLUSION

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

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: David W. Barr