



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

February 14, 2011

Mr. Vernon V. Matthews
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 11-FC-29; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Matthews:

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

BACKGROUND

In your complaint, you claim that the Facility violated the APRA by denying you access to a record that it does not have, but that is maintained by the Department of Correction's ("DOC") Central Office.

In response, Mr. Barr states that he has confirmed more than once that the Facility is not the custodian of the record you requested. Rather, the record is maintained by the DOC's Central Office and you should direct your request to it rather than the Facility.

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." I.C. § 5-14-3-1. The Facility is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Facility's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Facility denied your request for a contract that the Facility does not maintain. Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy...”). Mr. Barr states that the DOC’s Central Office is the custodian of the record you requested. Accordingly, you should submit your request to that entity rather than the Facility. I trust that the Central Office will either release the record to you or cite an applicable basis under the APRA for denying you access to it.

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: David W. Barr