



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 12, 2011

Robert W. Grass
4490 W. Reformatory Road
Pendleton, Indiana 46064-9001

Re: Formal Complaint 11-FC-302; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Grass:

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 formal complaint, you allege that on November 14, 2011, you submitted a written request to the PCF for all information and evidence regarding an investigation conducted by the PFC against you that commenced in April of 2011. As of December 8, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the PCF has failed to respond to your request in any fashion.

In response to your formal complaint, Mr. Barr advised that on November 16, 2011, he responded to your request in writing and acknowledged its receipt. Mr. Barr provided that he would attempt to respond to your request within the next fourteen calendar days. On November 29, 2011, Mr. Barr denied your request in writing, citing the investigatory records exception provided in the APRA pursuant to I.C. § 5-14-3-4(b)(1). I have enclosed copies of Mr. Barr's prior correspondence with you regarding your request. Mr. Barr has further provided that investigative files of the PCF are considered confidential pursuant to 210 I.A.C. 1-6-2(3)(E).

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).

An agency must not disclose a record 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). Pursuant to I.C. § 11-8-5-2(a), the Indiana Department of Correction may classify as confidential, information maintained on a person who has been committed to the department. Pursuant to this authority, the DOC has classified as confidential "internal investigation information." 210 I.A.C. 1-6-2(3)(E). As there is no dispute that the PCF compiled the requested records in the course of an internal investigation conducted on a person committed to the facility, it did not violate the APRA in denying your request. *See Opinion of the Public Access Counselor 11-FC-59.*

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 written in a cursive, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: David W. Barr