



STATE OF INDIANA

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March 30, 2011

Rocky M. Shroyer
DOC #: 956193
4490 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 11-FC-61; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Shroyer:

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.*, when it refused to produce records regarding an incident at the facility. David W. Barr responded on behalf of Pendleton Correctional Facility. Mr. Barr's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on January 25, 2011, you filed a records request with Mr. Barr seeking a copy of "conduct history" records for various individuals. On February 1, 2011, Mr. Barr issued a written denial of your request. In response to your complaint, Mr. Barr maintains PCF's denial on the basis of 210 Ind. Admin. Code 1-6-4(a), which permits an offender or his agent to inspect copies of his own record.

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. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). PCF is clearly 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 public records of PCF

during regular business hours unless the public records are exempt under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). 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. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). 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, PCF complied with the APRA by responding to your January 25th request on February 1st.

As to the substance of your records request, it is unclear from PCF's response why you have been denied access to the conduct records. Mr. Barr cites to 210 I.A.C. 1-6-4(a), which permits offenders to inspect copies of their own record, but it is unclear why PCF will not allow you to inspect the records you requested regarding the other offenders. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). In my opinion, a citation to 210 I.A.C. 1-6-4(a) is insufficient to sustain that burden.

That said, 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). Under I.C. § 11-8-5-2(a), the Indiana Department of Correction ("DOC") 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). If PCF compiled the requested records in the course of an internal investigation, PCF did not violate the APRA in denying your request. Those facts are not before me here, however. Thus, PCF should disclose the records to you unless it can cite a statutory basis for withholding them.

CONCLUSION

For the foregoing reasons, it is my opinion that PCF has not yet sustained its burden to demonstrate that the records you requested are exempt from disclosure under the APRA. Unless the PCF can cite to a statutory basis for withholding the records, PCF should disclose them to you within a reasonable period of time.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: David W. Barr

