



STATE OF INDIANA

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June 8, 2012

Raymond McGraw
DOC 883037
4490 Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-140; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. McGraw:

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, Administrative Assistant, responded on behalf of the PCF. His response is enclosed for your reference.

BACKGROUND

On May 25, 2012, you submitted a written request to the PCF for "all information related to Offender Chad Huddleson and his girlfriend (Stacy)." You believe that Stacy is serving time at the Rockville Women's Prison. On May 25, 2012, Mr. Barr acknowledged the receipt of your request in writing. Mr. Barr stated it was his intention to respond to the request within fourteen days, unless something unforeseen occurs. If there was a delay, you would be informed in writing. Mr. Barr further advised that the PCF would require additional information as to "Stacy", as you had not provided her last name. You allege that the PCF violated the APRA in responding to your request.

In response to your formal complaint, Mr. Barr advised that the PCF acknowledged the receipt of your written request pursuant to the requirements of I.C. § 5-14-3-9(b). As opposed to waiting for the PCF to respond to your request within fourteen days as outlined in its initial response to you, you have elected to file a formal complaint with the Public Access Counselor's Office. Regardless, the PCF is now denying your request for records pursuant to I.C. § 5-14-3-4(b)(23), as records released to an offender concerning another offender could jeopardize the safety and security of a jail or correctional facility. Further, your request for "Stacy" did not provide enough information in order for the PCF to conduct a search; however, if "Stacy" was in fact an offender, your request as to her would be denied pursuant to I.C. § 5-14-3-4(b)(23) as well.

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 twenty-four 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 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 acknowledged in writing the receipt of your request within seven days of its receipt. As such, it is my opinion that the PCF complied with the requirements of section 9 in responding to your request.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Here you submitted your written request to the PCF on May 25, 2012. On May 25, 2012, PCF acknowledged the receipt of your request in writing and provided that a response would be forthcoming within fourteen (14) days. Should there be an unexpected delay to the PCF’s response, you were informed you would be notified in



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writing. On June 6, 2012, you filed a formal complaint with the Public Access Counselor's Office. As the PCF initially acknowledged your request in writing within one (1) day of its receipt and provided that a response to your request would be forthcoming in fourteen (14) days, it is my opinion as of June 6, 2012, the date you filed your formal complaint, the PCF has complied with the requirements of providing all records or citation to a specific exception regarding their denial within a reasonable period of time.

The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term "reasonable particularity" is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12.* Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must "identify with reasonable particularity the record being requested." IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party's request. *Opinion of the Public Access Counselor 04-FC-38.*

If a public agency does not maintain any records responsive to a public records request, the agency does not violate the APRA by denying the request. *See Opinions of the Public Access Counselor 01-FC-61 and 08-FC-113.* A public agency is not required to conduct research or create a new record in order to satisfy a public records request. *See Opinions of the Public Access Counselor 03-FC-146; 05-FC-25; 10-FC-56.* However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *See Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88.* Here, you requested "All records on Chad Huddleston and his girlfriend "Stacy", who you believed was serving time at the Rockville Women's Prison. It is my opinion that your request was not made with reasonable particularity, as you

simply requested “all records” and provided nothing more than a first name and a possible location as to your request for “Stacy”. Further, the PCF did not deny your request based on lack of reasonable particularity and informed you it needed further specific information in order to fulfill it. As such, it is my opinion that the PCF did not violate the APRA.

Lastly, it is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). You are currently housed at the Pendleton Correctional Facility. The APRA contains an exception to disclosure to an “offender” for a record that contains information that would concern or affect the security of a jail or correctional facility:

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 or 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 records you sought from the PCF concerned Chad Huddleson, who is also considered an “offender” pursuant to the APRA and housed at the Pendleton Correctional Facility. You allege that “Stacy” is an offender as well; however I am unable to confirm her placement in a correctional facility. Regardless, it is my opinion that the PCF could act within its discretion to withhold records that you have sought that contain personal information that would concern or affect the security of a correctional facility. *See Opinions of the Public Access Counselor 11-FC-192; 11-FC-231; 11-FC-273.* Accordingly, it is my opinion that the PCF would not violate the APRA by denying your request pursuant to I.C. § 5-14-3-4(b)(23).

CONCLUSION

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

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: David W. Barr