



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

May 15, 2013

Mr. Mark A. Gill
DOC 913420
727 Moon Road
Plainfield, Indiana 46168

Re: Formal Complaint 13-FC-126; Alleged Violation of the Access to Public Records Act by the Plainfield Correctional Facility

Dear Mr. Gill:

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

BACKGROUND

In your formal complaint you allege that on or about March 15, 2013, you submitted a written request for records to the Facility. As of April 22, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Facility.

In response to your formal complaint, Superintendent Smith advised that the Facility received your written request for records on March 18, 2013. The request was misplaced and was discovered during the course of responding to your formal complaint.

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 Facility 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 Facility'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 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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here your written request for records was received by the Facility on or about March 18, 2013. Due to a clerical error, the Facility failed to acknowledge in writing the receipt of your written request within seven (7) days of receipt. Accordingly, it is my opinion that the Facility acted contrary to the requirements of section 9(b) of the APRA by not acknowledging your request in writing within seven (7) days of receipt. However, it is clear from the Facility's response that the failure to comply with section 9(b) was not intentional, as the Facility has now rectified the clerical error and commenced the process of gathering and reviewing all records that would be responsive to your request. All of which I trust is in satisfaction of your formal complaint.

As to the substance of your request, 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). The Facility would not be required to answer questions pursuant to an APRA request, nor would it be required to create a record in order to satisfy a request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility acted contrary to section 9(b) of the APRA in not responding to your request within seven (7) days of its receipt. The Facility has rectified the clerical error and commenced the process of gathering and reviewing all records that would be responsive to your request, which I trust is in satisfaction of your formal complaint.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Brian Smith