



STATE OF INDIANA

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May 15, 2013

Mr. Denar L. Royal
DOC 995156
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 13-FC-139; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Royal:

This advisory opinion is in response to your formal complaint alleging the Indiana State Prison ("Prison") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* William W. Wilson, Superintendent, responded on behalf of the Prison. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that the Prison denied your request for records in connection with a disciplinary hearing in which you were charged with battery. You allege that you orally requested to inspect a certain logbook, which was denied by the Disciplinary Hearing Officer.¹

In response to your formal complaint, Superintendent Wilson advised that the Prison has never received a formal written request for records from you pursuant to the APRA. You were found guilty of a disciplinary offense on February 8, 2013. On the Screening Report, State Form 39885, there is no mention of a request for records. At the subsequent Disciplinary Hearing, you were found guilty. On the Report of Disciplinary Hearing, State Form 39586, there is no mention of a request for records. There is a reference to certain logs; however the logs are considered confidential for the safety and security of 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

¹ To the extent you wish to appeal the decision made by the Disciplinary Hearing Officer, such matters our outside the purview of this office.

duties of public officials and employees, whose duty it is to provide the information.” See I.C. § 5-14-3-1. The Prison 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 Prison’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 a request is made orally, either in person or by telephone, a public agency may deny the request orally. See I.C. § 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 information regarding how or when the agency intends to comply. 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).

Here, the Prison has provided that it did not receive a written request for records from you pursuant to the APRA. You have alleged that you made an oral request for the log to the Disciplinary Officer, who in turn orally denied your request. The Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. See *Opinion of the Public Access Counselor 11-FC-80*. If the Prison did not receive your written request, it was not obligated to respond to it. Further, the Prison would not have violated the APRA by orally denying your oral request.

Had the Prison received a written request and wished to deny it, the denial would be required to be in writing, include the specific exemption that would authorize the records withholding, and include the name and position/title of the person responsible for the denial. See I.C. § 5-14-3-9(c). In the Prison’s response, it has indicated that the log you allegedly requested was considered confidential for the safety and security of the facility. The APRA contains an exception to disclosure to an “offender” for a record that contains personal information relating to a correctional officer, a law enforcement officer, a judge, the victim of a crime, or the family members of said parties or 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) a law enforcement officer (as defined in IC 35-31.5-2-185).
- (iii) a judge (as defined in IC 33-38-12-3);
- (iv) the victim of a crime; or

- (iii) a family member of a correctional officer, law enforcement officer, judge, 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).

There is no dispute that you are currently 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). Based on your status as an “offender” and the class of records that were requested, it is my opinion that the Department would have retained discretion to deny your request pursuant to I.C. § 5-14-3-4(b)(23)(B).

Pursuant to I.C. § 11-8-5-2(a), the Indiana Department of Corrections (“Department”) has the authority to promulgate administrative rules to "classify as confidential . . . personal information maintained on a person who has been committed to the department or who has received correctional services from the department." The Department may keep confidential information from the offender or other persons unless ordered to disclose by a court, for research purposes or if the Commissioner of the Department determines there is a compelling public interest to disclose them. *See* I.C. § 11-8-5-2(b). The Department has classified certain offender records as confidential pursuant to 210 IAC 1-6-2 and an offender, or his agent's, rights to access confidential or restricted information are set forth at 210 IAC 1-6-4. Department Policy 01-04-104, which further addresses access to offender records, is based upon the Department's administrative rules. *See Opinion of the Public Access Counselor 02-FC-46*. To the extent you sought records declared confidential pursuant to 201 IAC 1-6-2, the Prison would not have violated the APRA in denying your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion that if the Prison did not receive your written request, it was not obligated to respond to it. Further, it is my opinion that the Prison did not violate the APRA by orally denying your oral request.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: William Wilson