



STATE OF INDIANA

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June 12, 2013

Mr. Michael Hunt
DOC 961894
5124 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 13-FC-150; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Hunt:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Department on or about May 6, 2013. As of May 23, 2013, the date you filed your formal complaint with the Public Access Counselor’s office, you further allege that the Department has failed to respond to your request in any fashion.

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 Department 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 Department’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). It is my opinion that the Department violated section 9(b) of the APRA by failing to respond to your written request for records within seven (7) days of receipt.

Although I have not reviewed the records requested, 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”, 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) for records that would concern or could affect the security of a jail or correctional facility.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department acted contrary to the requirements of section 9(b) of the APRA by failing to respond to your written request within seven (7) days of receipt.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Matthew Worthman