



STATE OF INDIANA

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July 15, 2013

Mr. Michael A. Hollon
DOC 8210
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 13-FC-182; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Hollon:

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.* Linda VanNatta and Pamela James responded on behalf of the Department. Their responses are enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you requested a copy of your "psychological evaluation" that was conducted in the early 1980s as the request of your attorney and the St. Joseph County Prosecutor. You had previously maintained a copy of the record, but you allege it had been lost by Department staff. You maintain that the evaluation was also part of your court record. You further allege that the evaluation is being used by the Parole Board ("Board") in its deliberations. You believe that Department Policy requires that it allow you access to any psychological evaluations, as said evaluations are considered to be restricted information.

In response to your formal complaint, Ms. VanNatta advised that Department made an error in response to your request and that you may either view the evaluation or pay the respective fee and a copy will be provided.

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).

Pursuant to I.C. § 11-8-5-2(a), the 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." Pursuant to this authority, the Department has classified certain offender records as unrestricted, restricted, and confidential pursuant to 210 Ind. Admin. Code 1-6-2. As an offender, you would be able to access records deemed unrestricted or restricted pursuant to 210 IAC 1-6-2; however the Department would be prohibited from providing you access to records deemed confidential. *See* 210 IAC 1-6-4. Department Policy 01-04-104 addresses access to offender records and is based upon the Department's administrative rules. *See Opinion of the Public Access Counselor 02-FC-46; 13-FC-139.* 210 IAC 1-6-2(4) provides that all offender information obtained from other agencies, organizations, or sources shall be held to the same degree of confidentiality as that designated by the generating source.

As applicable here, psychiatric and psychological reports are deemed restricted pursuant to 210 IAC 1-6-2(2)(E) and Department Policy 01-04-104. Thus, you would not be prohibited from reviewing the psychological evaluation or paying the respective fee and being provided with a copy. As the Department has now recognized the error and will make the correction on your grievance appeal, I trust this to be in satisfaction of your formal complaint.

CONCLUSION

Based on the forgoing, it is my opinion the Department acted contrary to the APRA by denying your request for a copy of your psychological evaluation, as the evaluation is not deemed confidential pursuant 210 IAC 1-6-2, 4. As the Department has not recognized the error and will make the correction to your grievance appeal, I trust this to be in satisfaction of your formal complaint.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Pamela James, Linda VanNatta