



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

July 9, 2013

Mr. Randal L. Young
DOC 139527
727 Moon Road, Dormitory West M-30u
Plainfield, Indiana 46168

Re: Formal Complaint 13-FC-187; Alleged Violation of the Access to Public Records Act by the Plainfield Correctional Facility

Dear Mr. Young:

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.* I have granted your request priority status pursuant to 62 Ind. Admin. Code 1-1-3(3). Morgan Feeney, Casework Manager, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Facility on June 17, 2013. You specifically sought email correspondence between certain Facility internal affairs investigators, unit managers, library supervisors and employees of the Department of Correction ("Department"). On June 25, 2013, you provide that your request was denied on the basis of "confidentiality."

In response to your formal complaint, Ms. Feeney advised that your request was denied as the request sought records deemed confidential pursuant to 210 Ind. Code 1-6-2(3).

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, of which the Facility is a division of, 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 in person and the agency does not respond within 24 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 (7) 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). If the Facility in its original denial of your request provided only that the records were confidential, it acted contrary to the requirements of section 9(c) of the APRA.

As to the substance of your request, 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.*

Ms. Feeney advised that your request was denied pursuant to 210 IAC 1-6-2(3), which provides that offender diagnostic/classification reports, criminal intelligence information, information that, if disclosed, might result in physical harm to that person or other persons, information obtained upon promise of confidentiality, internal investigation information, juvenile records, and any other information required by law or promulgated rule to be maintained as confidential. Based on the language of your request, the records sought would be considered internal investigation information. As such, it is my opinion that the Department did not violate the APRA by denying your request pursuant to 210 IAC 1-6-2(3)(E).

CONCLUSION

Based on the foregoing, it is my opinion that the Facility acted contrary to section 9(c) of the APRA if it failed to cite in its original denial the specific exemption that would authorize the withholding of records responsive to your request. As to the substance of your request, it is my opinion that the Facility did not violate the APRA in denying your request.

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 distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Morgan Feeney