



# STATE OF INDIANA

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September 16, 2013

Mr. Jason T. Myers  
Offender #154417  
Correctional Industrial Facility  
5124 West Reformatory Road  
Pendleton, IN 46064

*Re: Formal Complaint 13-FC-237; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Myers,

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.* The Department has not responded to your complaint. They were invited to do so by this Office on August 15, 2013. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 15, 2013.

## BACKGROUND

Your complaint alleges that the Indiana Department of Correction violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

You allege that a request dated July 13, 2013 was submitted to the Department c/o LaDonna Mitchell, Offender Relations, asking for correspondence and complaints relating to offender laundry services. This office has not received any documentation rebutting your complaint as of the date of this opinion.

## 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 Ind.

Code § 5-14-3-1. The Indiana Department of Correction is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 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.

You have not provided your original request to our Office to supplement your Formal Complaint and you allege that you have not received a response from the Department. If the Department has not provided a response, pursuant to Ind. Code § 5-14-3-9(b), it is deemed denied.

The records you seek, if they exist, are public records under the APRA. The Department has not alleged that these records do not exist nor have they asserted that the records fall into an exemption from disclosure under APRA. An example of this would be information that compromises the security of a jail or correctional facility. See Ind. Code § 5-14-3-(23)(B). Furthermore, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." Opinion of the Public Access Counselor 01-FC-61; see also Opinion of the Public Access Counselor 08-FC-113 ("If the records do not exist, certainly the [agency] could not be required to produce a copy...."). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. See Opinion of the Public Access Counselor 10-FC-56. Your request sought correspondence regarding the offender laundry services and responses to complaints. You allude to making some of those complaints yourself. Presumably those records exist and the burden is on the Department to prove that the records should be exempt from disclosure. They have not done so.

## CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that the Indiana Department of Correction has violated the APRA in denying your request.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

cc: Bob Bugher