



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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February 13, 2013

Mr. Stephen L. Reed
DOC 161372
5501 S. 1100 W
Westville, Indiana 46391

Re: Formal Complaint 13-FC-28; Alleged Violation of the Access to Public Records Act by the Westville Correctional Facility

Dear Mr. Reed:

This advisory opinion is in response to your formal complaint alleging the Westville Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John Schrader, Litigation Liaison, responded on behalf of the Facility. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a request for records to the Facility for copies of all incident reports pertaining to your family contacting the Facility, all of your requests for protective custody, and certain bed location reports. You provided that your request was improperly denied on January 4, 2013.

In response to your formal complaint, Mr. Schrader advised that your request for records was denied on January 4, 2013 for the following reasons:

- The Facility does not generate a report for every call received; even if a report could be generated, any internal incident report would be exempt pursuant to I.C. § 5-14-3-4(b)(6). Further, your request provided no information regarding timeframe for the calls and the identity of the individuals who might have attempted to contact you.
- A "Request for Protective Custody" report was exempt from disclosure pursuant to I.C. § 5-14-3-4(b)(23) as the record contains security information and notations about other inmates and could place the offender at risk if found in possession.
- The "Bed Location Roster" is not an instantaneous report and the Facility does not have the ability to generate a historical report. Further, the

“Roster” contains information regarding all other inmates at a housing unit and would be exempt pursuant to I.C. § 5-14-3-4(b)(23).

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 Facility 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). 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).

If a public agency has no records responsive to a public records request, the agency generally 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*. The Department provided in response to your request that it did not maintain a report of every single call received by the Facility. Even if the Department did maintain such a report, your request failed to be made with reasonable particularity as you have failed to provide a date range for the request or which members of your family have contacted the Facility. As such, it is my opinion that the Facility did not violate the APRA by failing to maintain a record that was responsive to your request or by not creating a record in response to the receipt of your request.

It is my understanding based on your mailing address that you are 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). The APRA contains an exception to disclosure to an “offender” for a



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record that 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).

The Facility denied your request for certain protective custody reports and the bed location rosters pursuant to I.C. § 5-14-3-4(b)(23). The custody report contained security information about other inmates or security situations as part of an internal investigation and could place you at risk if found to be in your possession by other Offenders. The bed location roster contains information regarding all other inmates in the housing unit and disclosing the record would concern or affect the security of a correctional facility. As such, it is my opinion that the Facility did not violate the APRA in denying your request pursuant to I.C. § 5-14-3-4(b)(23).

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility did not violate the APRA.

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: John F. Schrader