



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 7, 2014

Mr. Michael Hunt #961894
Pendleton Correctional Facility
4190 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 14-FC-122; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility (Indiana Department of Correction)

Dear Mr. Hunt,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The DOC has not responded to your complaint despite an invitation to do so on June 5, 2014. 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 June 5, 2014.

BACKGROUND

Your complaint dated May 30, 2014, alleges the Indiana Department of Correction violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On May 4, 2014 you mailed a public records request to the Pendleton Correction Facility seeking the first and last names of employees and volunteer offenders who were on duty as commissaries on May 3, 2014. A large portion of your complaint is dedicated to the alleged thievery of your commissary items and your intention to sue the DOC. The DOC has not responded to your complaint.

DISCUSSION

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 DOC'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 the request has been received and information regarding how or when the agency intends to comply.

Unless it exists, a public agency is not required to produce a list of names upon request. See Ind. Code § 5-14-3-3(f). I am not familiar enough with DOC's commissary operations to conclude if the facility compiles a list of names of workers on specific dates. If a list exists to satisfy your request, it should be produced as long as it does not jeopardize prison security. See Ind. Code § 5-14-3-4(b)(23)(B). Without the benefit of a response from DOC, I cannot determine either way.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that if the Department of Correction maintains a list of commissary workers and correlating shift times, they would be required by the APRA to produce the list so long as it does not compromise facility security. If DOC does not maintain such a list, they are not required to produce it.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor