



# 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](http://www.IN.gov/pac)

August 12, 2014

Mr. Donald A. Lock #13119  
Pendleton Correctional Facility  
4190 W. Reformatory Road  
Pendleton, IN 46064

*Re: Formal Complaint 14-FC-149; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Lock,

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 responded to your complaint via Counsel Robert D. Bugher and the response is attached for your review. 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 July 17, 2014.

## BACKGROUND

Your complaint dated July 11, 2014, alleges the Indiana Department of Correction violated the Access to Public Records Act by not responding to your public records request.

You allege on June 18, 2014, you requested a copy of a “chain of custody” form generated from a February 2014 cell inspection. The DOC did not respond to your request. Pursuant to your formal complaint, DOC has responded claiming the chain of custody form does not exist.

## 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 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.

Based on Ind. Code § 5-14-3-9(b), your request was denied on or about June 25, 2014 – approximately seven (7) days after you sent the letter. Ind. Code § 5-14-3-9 states a request made in writing to a public agency must also be denied in writing. It does not appear the DOC properly denied your request until after the filing of your formal complaint. The denial may be justified as the record does not exist; however, the procedural requirements for denial have not been met.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indiana Department of Correction has acted contrary to the Access to Public Records Act by not denying your request in writing.

Regards,

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

Luke H. Britt  
Public Access Counselor