



# STATE OF INDIANA

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May 12, 2014

Mr. Michael Starkey #935677  
Plainfield Correctional Facility  
727 Moon Road  
Plainfield, IN 46168

*Re: Formal Complaint 14-FC-77; Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Department of Correction*

Dear Mr. Starkey,

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 via Mr. Bob Bugher, Esq., General Counsel. His response is enclosed 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 April 10, 2014.<sup>1</sup>

## BACKGROUND

Your complaint dated March 29, 2014, alleges 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 or about January 27, 2014, you submitted a request for access to public record to the DOC. Having familiarity with inmate mail, I can presume it took approximately ten days to reach the DOC. Assuming the request was received by DOC sometime the week of February 10, 2014, the DOC would have been responsible for acknowledging your

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<sup>1</sup> As your initial request for public records to the DOC was dated January 27, 2014, the effective denial date would have been, at the latest, the week of February 17, 2014. See Ind. Code § 5-14-3-9(b). Because this is outside the thirty (30) day timeframe contemplated by Ind. Code § 5-14-5-7, you do not have standing to file a formal complaint. Your complaint does raise an issue I would like to address, however, it is for educational and instructive purposes only and this complaint should not be used for persuasive authority by a Trier of fact in a case stemming from this controversy.

request sometime the week of February 17, 2014. As of the date of the filing of your formal complaint on April 10, 2014, you had not received a response.

Specifically, you sought information relating to your annual parole hearing. Although I cannot determine with certainty if you were seeking a copy of the transcript of the proceeding or a video copy of the hearing, you also asked for “all information” the parole board considered in rendering their decision.

After the filing of your formal complaint, the DOC submitted to the Office of the Public Access Counselor both its response and a letter sent to you on April 28, 2014 denying your request. The DOC stated all of the information related to the hearing was recorded on a DVD. As inmates are, by prison policy, prohibited from possessing DVD discs, your access was denied. The DOC did not address the request of all other information considered by the Indiana Parole Board.

## **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.

It is unclear why the DOC failed to acknowledge receipt of your request and was therefore denied seven days after it was received. If it was, in fact, received by the Department, a violation of the APRA would have occurred.

As for the records you requested, the APRA states a public record is: any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. See Ind. Code § 5-14-3-2(o).

A DVD recording would fall squarely within the definition of a public record. The burden is on DOC to demonstrate if there is any other exception which would preclude access to the record. As an inmate, however, you are subject to the facility's rules and regulations. If inmates are prohibited from possessing DVD discs for security reasons, the DOC has the discretion to set a policy accordingly. Moreover, unlike a trial court, a public agency is not required to transcribe a recording pursuant to a public records request.

My concern is your entitlement to the information on a disc. Your status as an inmate does not automatically preclude you from public records access. Therefore, my recommendation would be for the prison facility to accommodate a viewing of the disc and allow you to manually make notes while reviewing. Beyond any safety concerns, I see no reason why the facility could not make this accommodation.

While I cannot find the DOC to be in violation of the APRA due to the lack of timeliness of your formal complaint, I can suggest to the DOC that although inmates may not be allowed to possess DVDs of public records, they should be allowed to view them.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Mr. Bob Bugher, Esq.