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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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TRACEY L. WHEELER,  
*Complainant,*

v.

BRANCHVILLE CORRECTIONAL FACILITY,  
*Respondent.*

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Formal Complaint No.  
20-FC-122

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Branchville Correctional Facility violated the Access to Public Records Act.<sup>1</sup> Associate General Counsel for the Indiana Department of Correction Megan Little filed an answer on behalf of the BCF. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

complaint received by the Office of the Public Access Counselor on September 2, 2020.

### **BACKGROUND**

This case involves a dispute over access to conduct and confiscation reports involving inmates at the Branchville Correctional Facility (“BCF”).

On August 12, 2020, Tracey Wheeler (“Complainant”) filed a public records request with the BCF seeking the following:

1. Copies of any and all conduct reports pertaining to any and all inmates at the Branchville Correctional Facility that had been written up and/or found guilty of possessing a single commissary item “opened” and/or “half eaten” that had not reflected on the inmate’s commissary orders for the last 90 days. From the time periods of 8-1-18 through 8-1-20.
2. Copies of any and all confiscation reports initiated by Toney Grey, as the “confiscating officer, involving the confiscation of an “opened” and/or partial commissary item in the amount of (1) or (2) items. This information should only be limited to the dates of 8-1-18 through 8-10-20.
3. Copies of any and all conduct reports written by Toney Grey. This information should only be limited to the dates of 8-1-18 through 8-10-20.

On August 18, 2020, the BCF denied Wheeler’s request. BCF asserted that the requested records were confidential or restricted records pursuant to 210 IAC 1-6-2-3(B) and (E), which classifies records as criminal intelligence/internal investigation. Wheeler argues that the records should

not be withheld, explaining that the only information listed on the requested reports are names, DOC numbers, and dates, which is all public information. Moreover, Wheeler claims that if there was any confidential information within the reports, then that information should be redacted rather than the entire report being withheld. Wheeler contends that this office addressed a similar issue in Advisory Opinion 20-FC-31, finding that the denial of a similar records request was a violation of the Access to Public Records Act.

On September 8, 2020, the Indiana Department of Correction (“IDOC”) filed a response to Wheeler’s complaint denying the BCF violated the APRA. First, IDOC reiterated that the BCF appropriately applied the criminal intelligence and internal investigatory information exception. The agency asserts that confiscation and conduct reports are considered both evidence of alleged criminal intelligence and internal investigation information.

Second, IDOC argues that along with the previously mentioned administrative rule, the BFC was permitted to deny access to the requested records in accordance with Indiana Code section 5-14-3-4 and Indiana Code section 11-8-5-2. Both statutes grant the public agency the authority to classify certain records as confidential; and thus, authorizing the records to be withheld from public disclosure.

### **ANALYSIS**

The key issue in this complaint is whether the Access to Public Records Act requires an IDOC prison facility to release records and information about offenders and incidents that take place at the prison.

## **1. The Access to Public Records Act**

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

The Access to Public Records Act (“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.” Ind. Code § 5-14-3-1. The Branchville Correctional Facility (“BCF”) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy BCF’s public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

### **2. Nondisclosable information of prison facilities**

A noteworthy exception to APRA’s general rule of disclosure is for records declared confidential by an agency with rulemaking authority to declare certain records confidential.

APRA exempts from disclosure those records declared confidential by a rule adopted by a public agency under specific

authority to classify public records as confidential granted to the public agency by statute. *See* Ind. Code § 5-14-3-4(a)(2). The statute giving IDOC—and by extension BCF—that authority is Indiana Code section 11-8-5-2. It includes information about an inmate or former inmate that identifies:

- (1) Medical, psychiatric, or psychological data or opinion which might adversely affect that person's emotional well-being.
- (2) Information relating to a pending investigation of alleged criminal activity or other misconduct.
- (3) Information which, if disclosed, might result in physical harm to that person or other persons.
- (4) Sources of information obtained only upon a promise of confidentiality.
- (5) Information required by law or promulgated rule to be maintained as confidential.

In turn, the IDOC has promulgated rules under Title 210 of the Indiana Administrative Code. Namely, 210 IAC 1-6-2 and 4. These rules are quite broad and encompass the types of information sought in the request. It includes, in part, the following:

- (2) Restricted information shall include, but is not limited, to the following:
  - (A) Education, medical, sex offender, substance abuse, disciplinary, criminal, and employment records.
  - (B) Finger and voice prints.

- (C) Photographs.
  - (D) Institutional summaries.
  - (E) Psychiatric and psychological reports.
  - (F) Social history reports.
  - (G) Progress reports.
  - (H) Educational and vocational reports.
- (3) Confidential information shall include, but is not limited to, the following:
- (A) Offender diagnostic/classification reports.
  - (B) Criminal intelligence information.
  - (C) Information that, if disclosed, might result in physical harm to that person or other persons.
  - (D) Information obtained upon promise of confidentiality.
  - (E) Internal investigation information.
  - (F) All juvenile records.
  - (G) Any other information required by law or promulgated rule to be maintained as confidential.

It can be reasonably said that much of the information requested falls into these categories. Wheeler is mistaken that this office found a DOC facility in noncompliance with the law on these matters. In reality, it was technical procedural noncompliance and not based upon substantive matters of disclosability of records. In this case, the BCF provided arguments and carried its burden of justifying withholding of the records.

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Branchville Correctional Facility did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

**Luke H. Britt**  
Public Access Counselor