

July 27, 2000

Ms. Kay Bell  
R.R. 1, Box 172  
Shoals, Indiana 47581

Re: Advisory Opinion 00-FC-19 *Denial of Access to Public Records by the Indiana Department of Correction.*

Dear Ms. Bell:

This is in response to your formal complaint, which was received on July 7, 2000. You have requested an opinion as to whether the Indiana Department of Correction (hereinafter, "Department,") violated the Access to Public Records Act, Indiana Code chapter 5-14-3 (hereinafter, "APRA,") with respect to your June 12, 2000 request for access to public records. Ms. Pam Pattison, Public Information Officer for the Department responded to your complaint. A copy of her response is enclosed for your reference. It is my opinion that, with respect to your request of June 12, 2000, the Department denied access in violation of the APRA by failing to respond to your request within seven (7) days after receiving it.

### BACKGROUND

According to the facts presented in your complaint, you mailed a written request to the Department, dated June 12, 2000, for copies of:

all reports, evaluations, studies, memos and all other material received, retained, maintained, used, or filed by the (Department) concerning the welfare of Indiana prisoners housed at CCA/Otter Creek Correctional Center generated as a result of prisoner complaints including letters written to Governor Frank O'Bannon.

As of the date of your complaint, July 7, 2000, you had received no response to your written request.

In her response, Ms. Pattison indicated that your request was received on June 19, 2000, but the delay in responding to it was due to the fact that you did not direct it to the appropriate person in the Department. Your request should have been directed to Mr. Robert Bugher, General Counsel or the Public Information Office, not to Ms. LaDonna Mitchell, Director of Offender Relations. Ms. Mitchell was out of the office for several weeks on vacation, which attributed further to the delay. The Department hopes that their responses to your prior public records requests serve as evidence that this

delay was not willful or malicious. In any event, Ms. Pattison stated that a response would be sent to you. A copy of the Department's response, dated July 21, 2000, was received in this Office on July 26, 2000, and a copy is enclosed.

## 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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection. A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it is my opinion that the Department failed to respond to your written request dated June 12, 2000 within the time period specified under Indiana Code section 5-14-3-9(b), which constituted a denial under the APRA. This denial is actionable under the APRA. The Department has now responded to your request stating that they do not have any public records that you requested.

It is important that I address the Department's assertion that, had you directed your request differently, you might not have experienced any delay in their response. I am aware that the Department has centralized the process for handling public records requests, which is in my opinion the best way for larger public agencies to handle these requests. The burden still lies with the public agency, once a request has been received, to handle that request in compliance with the APRA, whether it be in a centralized manner or not. If your request was not properly directed, it should have been forwarded within the Department to the appropriate person.

## CONCLUSION

It is my opinion that the Indiana Department of Correction failed to respond within the time period required under Indiana Code section 5-14-3-9(b) with respect to your public records request of June 12, 2000 and that this denial is actionable under the Access to Public Records Act.

Sincerely,

Anne Mullin O'Connor

cc: Ms. Pam Pattison, DOC

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