

June 12, 2001

Mr. Fernando C. Griffith
#105877 G-422
P.O. Box 1111
Carlisle, IN 47838

Re: Advisory Opinion 01-FC-28; Alleged Denial of Access to Public Records by the Wabash Valley Correctional Facility, Indiana Department of Correction.

Dear Mr. Griffith:

This is in response to your formal complaint, which was received on May 16, 2001. You have alleged that the Wabash Valley Correctional Facility of the Indiana Department of Correction ("Department") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you requested copies of case law and an internal policy of the Department, number 00-01-102 and were denied access to these copies. Ms. Pam Pattison, from the Department, provided a written response to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not violate the APRA when it denied you access to copies of legal materials at no charge under the facts presented.

BACKGROUND

According to your complaint, you claim that on May 14, 2001, the law librarian at your facility denied you copies of case law. The librarian advised you that she could not provide the copies under Departmental policy, specifically policy number 00-01-102. After reading this policy, you believe that this policy instructs the librarian to provide copies to you, of the case law and the Departmental policy. You requested a copy of this policy and were also denied a copy. You then filed your complaint with this Office.

In response to your complaint, Ms. Pattison a copy of the grievance you filed with the Department against the law librarian. Your grievance outlined the librarian's denial of copies of case law. You asked that this be provided to you because you are indigent and the policy number 00-01-102 provides that you are supposed to get copies at no charge. In response to your complaint, the law librarian stated that policy number 00-01-102 does not pertain to obtaining copies of case law, policies or anything other matter that is not for the purposes of pending litigation. Ms. Pattison also provided a copy of policy number 00-01-102, a copy of which 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 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." 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).

The APRA also provides that a public agency may charge a copying fee under Indiana Code section 5-14-3-8. For state agencies, the Indiana Department of Administration sets the photocopying fee at the average cost per copy that must be, at a minimum, \$0.10 per page. Ind. Code §5-14-3-8(c). Currently, it is the policy of the Department of Administration that the copying fee is \$0.10 per page. By its own policy, however, the Department has notified offenders that they are required to pay the copying fee, except under limited circumstances.

Offenders shall be responsible for the cost of making copies, which shall be determined by the amount charged for copies to private citizens as established by the Department of Administration. An offender who is indigent shall be allowed to obtain copies of legal materials free of charge. The number of copies provided free of charge shall be for pending litigation only and sufficient to provide the court with the number of copies required by the court's rules and one (1) extra copy for the offender's records.

Policy number 00-01-102, Section VI. [Emphasis added.]

According to your complaint, you requested copies of case law and, ultimately a copy of policy number 00-01-102 and were denied these copies. The law librarian refers to policy number 00-01-102 and, in response to your complaint, stated that the policy does not pertain to copies of case law or policies that are not to be presented in pending litigation before a court. While you may be indigent, if the legal materials you requested were not to be submitted to a court, then by its own language you are not entitled under policy number 00-01-102 to copies of case law free of charge. Similarly, there would be no obligation under the Department's policy to provide you a copy of the policy at no charge.

You did not claim in your complaint with this Office or your grievance to the Department that these materials were sought for use in pending litigation and that is a condition precedent for an indigent offender to obtain copies at no charge under policy number 00-01-102. It is my opinion, therefore, that the Department did not violate the APRA when it denied you access to copies of legal materials at no charge if the copies were not for the purpose of use in pending litigation.

CONCLUSION

It is my opinion that the Indiana Department of Correction did not violate the APRA or its own policy number 00-01-102 by denying you access to copies free of charge under the facts as you have presented them.

Sincerely,

Anne Mullin O'Connor

cc: Ms. Pam Pattison, DOC