

August 21, 2002

Mr. Engai Maul
#902647 519-D-East
P.O. Box 41
Michigan City, IN 46361-0041

Re: Advisory Opinion 02-FC-37; Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Maul:

This is in response to your formal complaint, which was received on July 29, 2002. You have alleged that the Indiana Department of Correction ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that Mr. Robert Bugher, Legal Services Director for the Department, denied you access to public records concerning your administrative segregation. The Department, through Ms. Pam Pattison, provided copies of written responses to your request from Mr. Bugher dated July 25, 2002 and copies of these responses are enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not deny you access to public records in violation of the APRA with respect to your July 19, 2002 request for access to public records.

BACKGROUND

According to your complaint, you made a request dated July 19, 2002 for copies of all computer records and all papers that relate to your administrative segregation at the Indiana State Prison. You claim that Mr. Bugher denied you access to these public records in violation of state law. You then filed your formal complaint with this Office.

In response, the Department provided copies of two letters written after Mr. Bugher received your public records request. Both letters are dated July 25, 2002. The first letter was addressed to you and advised you that the documents you requested were probably held at the Indiana State Prison and that he had instructed Prison officials to compile those documents and make them available to you. The second letter was addressed to Mr. Barry Nothstine, Litigation Liaison at the Prison, advising him of your request and asking that he compile the records for you and inform you of the copying fee, so that upon payment, the documents will be made available to you. The Department considered these two letters to be responsive to your request and that there was no denial under the APRA.

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 purpose 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 access to 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. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). There is no time frame for production of public records stated in the APRA, but generally public agencies are held to a standard of reasonableness depending upon the records requested. 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).

According to the information provided by the Department, it is not clear when your request was received, but it appears that the Department responded within the seven (7) days required under the APRA. According to your complaint, it is unclear whether you had received Mr. Bugher's response when you sent your formal complaint to this Office, but it is probable that you had not yet received it. In any event, it appears that the Department did respond within the time frame required under the APRA and that you are not being denied access to your administrative segregation records. For these reasons, it is my opinion that the Department did not violate the APRA with respect to your July 19, 2002 request for access to records concerning your administrative segregation at the Indiana State Prison.

CONCLUSION

It is my opinion that the Indiana Department of Correction did not violate the Access to Public Records Act with respect to your July 19, 2002 request for access to public records concerning your administrative segregation.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pam Pattison, DOC w/o enclosure