

September 9, 2002

Mr. Michael Hunt
#961894 20-E-Dorm
P.O. Box 41
Michigan City, IN 46361

Re: Advisory Opinion 02-FC-40; Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Hunt:

This is in response to your formal complaint, which was received on August 14, 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 the Department denied you access to lists generated from computer records for offenders at the Indiana State Prison. Ms. Pam Pattison of the Department responded in writing to your complaint by providing a copy of the response you received from Mr. Robert Bugher, Legal Director for the Department. A copy of that response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not violate the APRA by failing to provide you with the lists you requested as the Department is not required to create such lists under Indiana Code section 5-14-3-4(c).

BACKGROUND

According to your complaint, in a letter dated August 1, 2002, you requested from Mr. Bugher the following information:

1. Computer records for ALL offenders that are currently confined at [the] Indiana State Prison that are currently a level one and level two and level three offender. Provide the first name and last name and [his] D.O.C.¹ number and [his] current housing location . . . as of August 1, 2002. Provide the race for each offender.
2. Computer records for ALL offenders that [were] transfer[red] in the last two years from Indiana State Prison to a level one facility and a level two facility and a level three facility. Provide the first name and last name and D.O.C. number for each offender. Provide [his] race that being white or African-American or other for each offender that was transfer[red] from Indiana State Prison in the last two years to the above level facility in the State of Indiana from Indiana State Prison at Michigan City, IN. In addition I need the race for each offender in Number One, above, that being white or African-American or other.

You state in your formal complaint that the Department denied you access to the above-requested information, but you did not provide any specific information concerning that denial. In any event, you filed your formal complaint with this Office on August 14, 2002.

In her response, Ms. Pattison provided a copy of Mr. Bugher's letter, which was written in response to your August 1st request. In a letter dated August 9, 2002, Mr. Bugher advised you that the Department is not required to produce lists of names and addresses under Indiana Code section 5-14-3-4(c) and that the Department would not do this for you. Mr. Bugher also referenced Indiana Code section 5-14-3-4(b)(8), which concerns personnel files for public employees, but this provision does not appear to apply to your request. In addition, Mr. Bugher stated that the information you requested would not be disclosed to any offender because this could jeopardize the safety and security of the Department's facilities. It is the Department's position that you did in fact receive a response from Mr. Bugher and that there was no obligation to produce the lists you requested in your August 1st request.

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).

The general rule of the APRA is that public agencies must disclose public records upon request under Indiana Code section 5-14-3-3. Also, public agencies are generally not required to produce new public records in order to respond to a public records request, however, with respect to records maintained on computer databases, a public agency is typically required to make "reasonable efforts" to provide the disclosable data maintained. Ind. Code §5-14-3-3(d). The General Assembly provided an exception to this, however, when it relates to producing lists of names and addresses.

Indiana Code section 5-14-3-4(c) provides, in relevant part, that

a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from lists unless access to the lists is prohibited by law.

In the case of your August 1st request, you asked the Department to compile a list of names and addresses, as well as other information, concerning offenders at the Indiana State Prison. The Department apparently does not maintain such lists and would be required to create a new record in order to provide this information to you.² Under Indiana Code section 5-14-3-4(c), the Department is not required to produce the lists you requested and therefore, did not violate the APRA

CONCLUSION

It is my opinion that the Indiana Department of Correction did not violate the Access to Public Records

Act with respect to your request for lists of names and addresses from its computer records because the Department is not required to create such lists under Indiana Code section 5-14-3-4(c).

Sincerely,

Anne Mullin O'Connor

Enclosure

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

¹ - Department of Correction.

² - Mr. Bugher also references security concerns related to the disclosure of such information to offenders. This may be addressed in the Department's enabling act and regulations adopted thereunder, but I would suggest that if this is a basis for the denial of a request, the Department should provide a reference to the specific statutory and/or policy authorizing nondisclosure.