

October 15, 2002

Mr. Aaron Israel (Isby)
#892219 DE207
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-46*; Alleged Denial of Access to Public Records by the Indiana Department of Correction, Indiana State Prison.

Dear Mr. Israel:

This is in response to your formal complaint, which was received on September 16, 2002. You have alleged that the Indiana Department of Correction, Indiana State Prison ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department wrongfully denied you access to public records. Ms. Pam Pattison of the Department responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that, while the Department's initial response did not contain all the bases for denying you access to the records you requested, ultimately the Department did not deny you access in violation of the APRA.

BACKGROUND

According to your complaint, in a letter dated August 6, 2002, you requested the opportunity to inspect and obtain copies of the following documents from Mr. Barry Nothstine of the Department:

1. All disciplinary rosters created from 1998 to the present date listing and containing conduct reports filed against prisoners for assault on other prisoners or guards, these rosters must list the deposition [sic] of these cases.
2. Any and all records, files or statistical data being kept by Indiana State Prison officials and the Department's central office that list and contain the number of assaults that occur monthly and annually at the Indiana State Prison by prisoners from 1998 to present.

On August 7th, you received a memorandum from Mr. Ed Pokorny, Administrative Assistant advising you that Mr. Nothstine was on vacation and that the Department "will provide you with the documents" when he returned. In another memorandum dated August 21, 2002, Mr. Nothstine advised you because your request was made in a name that was not the name under which you were committed, you needed to make a new request under the proper name. You then filed your complaint with this Office claiming that since the reason for Mr. Nothstine's denial was not proper under the APRA, your

request should now be granted.

In her response, Ms. Pattison stated that the failure to use your proper name was not the sole basis for denying your August 6th request but that under Indiana Code section 34-28-2-1.5, offenders are not permitted to change their names while incarcerated. In his response, Mr. Nothstine should have also informed you that your request was denied because offenders may not access specific information on other offenders under Departmental policy and regulation because such information could jeopardize the safety and security of Department facilities.

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. 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). A person who has been denied access to public records under the APRA may file an action in circuit or superior court to compel the public agency to allow inspection and copying of the public records. Ind. Code §5-14-3-9 (d).

One exception to disclosure under the APRA is for records that are "declared confidential by rule adopted by a public agency under" specific statutory authority to do so. Ind. Code §5-14-3-4(a)(2). The Department has authority under Indiana Code section 11-8-5-2(a) to promulgate administrative rules to "classify as confidential . . . personal information maintained on a person who has been committed to the department or who has received correctional services from the department." Indiana Code section 11-8-5-2(b) also provides that the Department may keep confidential information from the offender or other persons unless ordered to disclose by a court, for research purposes or if the Commissioner of the Department determines there is a compelling public interest to disclose them.

The Department has classified certain offender records as confidential by administrative rule at 210 IAC 1-6-2 and an offender, or his agent's, rights to access confidential or restricted information are set forth at 210 IAC 1-6-4. Department Policy #01-04-104, which further addresses access to offender records, is based upon the Department's administrative rules.

According to your complaint, you sent a request to Mr. Nothstine for information concerning discipline and assaults committed at the Indiana State Prison. Mr. Nothstine's response to you indicated that for security reasons, offenders may not use other names. He then advised you that you needed to

make a new request under your appropriate name. While this may not have been a valid reason under the APRA for denying you access to public records, you are incarcerated and there are different rules that apply to you that do not apply to the public at large. Ms. Pattison's response indicates that you should have been advised generally that for security reasons, under the policies and regulations governing the Department, that you are not entitled to inspect or copy these public records. For this reason, it is my opinion that the denial was not a violation of the APRA. It is my recommendation, however that the Department take care in the future to fully explain the bases for such denials so that requestors are fully advised of the legal bases for such denials.

CONCLUSION

It is my opinion that the Department of Correction, Indiana State Prison, did not deny you access to public records in violation of the APRA.

Sincerely,

Anne Mullin O'Connor

¹ Department of Correction Policy No. 01-04-104, "The Establishment, Maintenance and Disposition of Offender Records" and 210 IAC 1-6-1 et seq.

² There are additional exceptions that permit the Department to disclose to other public agencies as well.

Enclosure cc: Ms. Pam Pattison, IDOC w/o enclosure
