

November 12, 2002

Mr. Michael Hunt
#961894 Cube 20-East E Dorm
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-52*; Alleged Denial of Access to Public Records by the Indiana Department of Correction, Indiana State Prison.

Dear Mr. Hunt:

This is in response to your formal complaint, which was received on October 21, 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 denied your public records request dated October 4, 2002 for access to a particular newspaper press release and investigation papers forwarded to the local prosecuting attorney. Ms. Pam Pattison of the Department responded in writing to your complaint. 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 documents you requested because the Department did not receive your request until after you filed your formal complaint with this Office.

BACKGROUND

According to your complaint, in a letter dated October 4, 2002, you requested from the Department access to the following:

1. A press release concerning an assault on a Department employee; and
2. A photocopy of the investigation papers forwarded to the LaPorte County Prosecuting Attorney concerning the above-referenced assault.

What is interesting about your request to the Department is that it appears that you completed the formal complaint form and provided that form as your public records request. When you had not received a response seven (7) days after you apparently delivered your request, you filed the formal complaint form with this Office alleging that you had been denied access to these public records.

In her response, Ms. Pattison stated that the Department did not receive your request until after you had filed your formal complaint with this Office. Consequently, the Department does not believe that there has been any violation of the APRA. Further, Ms. Pattison stated that had they received your request, you would have been provided with a copy of the press release, but the investigatory records of the assault are confidential¹ under Indiana Code section 5-14-3-4.

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).

According to your complaint, you allegedly provided the Department with your request on or about October 4, 2002. The Department stated that your request was not received until after they had been advised of your formal complaint. For this reason, it is my opinion that you were not denied access to public records by the Department in violation of the APRA. Ms. Pattison has now provided a substantive response to your request and I trust that you will follow up to obtain a copy of the press release if you have not already done so.

On a final note, it is my opinion that the Indiana General Assembly did not mean for the formal complaint process provided under Indiana Code chapter 5-14-5 to be used in the manner in which this complaint was filed. You filled out the complaint form and attached it to your initial request before even allowing the Department a chance to respond under the APRA. This formal complaint form is not intended for use as a public records request form. In the future, you must provide the Department adequate time to respond to your requests and you should verify that your request has actually been received prior to filing any formal complaint with this Office. It is my hope that you will follow these recommendations for future requests to the Department, and if necessary, any contact with this Office.

CONCLUSION

It is my opinion that the Indiana Department of Correction, Indiana State Prison did not violate the Access to Public Records Act with respect to your October 4, 2002 request because the Department did not receive your request until after your formal complaint was filed with this Office.

Sincerely,

Anne Mullin O'Connor

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

¹ It appears the Department is relying upon Indiana Code section 5-14-3-4(b)(1) concerning the investigatory records of a law enforcement agency. This is actually a discretionarily disclosable document, not confidential per se. In any event, a public agency may withhold such documents from disclosure under the APRA.