

January 30, 2003

Mr. James E. Manley
#900778 A162
P.O. Box 41
Michigan City, IN 46361

Re: *Formal Complaint 03-FC-1*; Alleged Denial of the Access to Public Records Act by the Indiana Department of Correction, Indiana State Prison.

Dear Mr. Manley:

This is in response to your formal complaint, which was received on January 6, 2003. 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 you access to food service department 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 the Department did not deny you access to public records in violation of the APRA.

BACKGROUND

According to your complaint, you requested copies of food service department records from the Department. While you have not been specific, it appears you were told that you could not have access to these public records. You allege that you were denied access to these public records on two occasions, December 6th and December 27th of last year. In your complaint, you stated that you advised a Department staff person that you would file a formal complaint with this Office if these records were not produced to you by January 3, 2003. The staff person, a Mr. Walker, then allegedly told you that he considered this to be a threat and that he was denying you access on this basis. You then filed your formal complaint with this Office.

In her response, Ms. Pattison stated that it is the Department's position that there was no violation of the APRA with respect to your public records request. Ms. Pattison included as part of her response copies of two memoranda, which were written to you by Mr. Barry Nothstine, Administrative Services Supervisor. The first memorandum was dated December 6, 2002 acknowledging the receipt of your request that very day. Mr. Nothstine did not deny you access to any public records, he only advised you that since your request was for many records, to the extent the Department had any records that satisfied

your request, it may take some time to gather these records for you. The second memorandum, which was dated January 13, 2003, addressing each of your individual requests and advising you that approximately 3,300 pages were available for inspection in the Administration Building or, if you preferred, copies would be made available to you at \$0.10 per copy.

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 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. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been hand-delivered within twenty-four (24) hours after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it appears that Mr. Nothstine, on behalf of the Department did respond to your written request for access to public records within the twenty-four (24) hours required under the APRA. In that memorandum, Mr. Nothstine did not deny you access to any public records; he informed you that it would take some time to gather the records that were responsive to your request. At the time of his response, Mr. Nothstine was not aware how many or if there were any records to satisfy all of the items you listed in your request. While I recommend that public agencies be as substantive as possible in this response, it appears that Mr. Nothstine communicated to you about your request in the best manner he could at that time given the breadth of your request.

As noted above, a public agency is required to communicate with the requestor within twenty-four (24) hours of his request as to the substance of his request, but there is no set time for production. See, Ind. Code §5-14-3-9(a). Further, the agency determines how access will be provided, and a requestor,

while he may ask, is not empowered to demand production at any particular time. See, Ind. Code §5-14-3-7(a). It is my opinion, therefore, that the Department did not deny you access to the public records you requested.

CONCLUSION

It is my opinion that the Indiana Department of Correction, Indiana State Prison did not deny you access to public records with respect to your December 6, 2002 public records request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pam Pattison, DOC