

May 14, 2008

Derek Morris
DOC #104145
PO Box 30
Pendleton, Indiana 46064

Re: Formal Complaint 08-FC-107; Alleged Violation of the Access to Public Records Act by the Marion County Jail II, operated by CCA

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Marion County Jail II, operated by CCA ("Jail") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. I have enclosed a copy of the Jail's response to your complaint for your reference. It is my opinion the Jail violated the Access to Public Records Act because it did not respond to the request within time allowed by the APRA.

BACKGROUND

In your complaint you allege that you requested records from the Jail on April 2, 2008. Receiving no response, you mailed this complaint on April 23, and I received it on April 28.

The Jail responded to the complaint by letter dated April 30 from Heidi Marshall of Corrections Corporation of America. Ms. Marshall indicated that the Jail had some difficulty locating the records, which is why it did not respond within seven days. Ms. Marshall included a copy of the requested information.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Jail is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Jail during regular business

hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, facsimile, or electronic mail and the Jail does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Jail received your request some time after April 2. Ms. Marshall agrees that the Jail did not respond to the request within seven days. This is a violation of the APRA. The agency should respond to a request within seven days of receipt of the request regardless of whether the records are available at that time.

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

CONCLUSION

For the foregoing reasons, it is my opinion the Jail violated the Access to Public Records Act by not responding to the request within time allowed by the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Heidi Marshall, CCA