



STATE OF INDIANA

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June 27, 2013

Ms. Wendy Knight
5124 W. Reformatory Road
Pendleton, Indiana 46064

Re: Informal Inquiry 13-INF-35; Formal Complaint 13-FC-150

Dear Ms. Knight:

This is in response to your informal inquiry regarding a formal complaint filed by Mr. Michael Hunt against the Indiana Department of Correction ("Department"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

BACKGROUND

On May 23, 2013, Mr. Hunt filed a formal complaint with the Public Access Counselor Office's against the Department. *See Opinion of the Public Access Counselor 13-FC-150.* On June 13, 2013, I issued advisory opinion 13-FC-150, where I opined that the Department acted contrary to the requirements of section 9(b) of the APRA by failing to respond to Mr. Hunt's request for records within seven (7) days of receipt. Due to a miscommunication, the Department failed to provide a response to Mr. Hunt's formal complaint. Mr. Matthew Worthman has now submitted a response on behalf of the Department to Mr. Hunt's formal complaint and requested an informal opinion as to whether the Department would have been in violation of the APRA had such a response been filed.

In Mr. Hunt's formal complaint, he alleged that he submitted a written request for records to the Department on or about May 6, 2013. As of May 23, 2013, the date Mr. Hunt filed formal complaint 13-FC-150 with the Public Access Counselor's office, he alleged that the Department has failed to respond to his request in any fashion.

Mr. Worthman has advised that Mr. Hunt had requested a copy of the Department's internal recreation schedule. He initially paid the \$.10 copy fee in order to receive the record. When the schedule was later amended, Mr. Hunt maintained that he should be provided with free copies of the schedule in light of his initial payment. Mr. Hunt was advised that he was not entitled to a "lifetime" copy and that upon receipt of

the respective copy fee, the new schedule would be provided. Mr. Worthman further provided that the schedule is visibly posted in the law library, where Mr. Hunt visits daily.

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.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. *See* I.C. § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Department advised that Mr. Hunt was notified on multiple occasions that he would be provided copies of the schedule upon receipt of the respective copy fee. If Mr. Hunt’s requests that were received were in writing, the Department would have complied with the APRA if its written response was provided within seven (7) days of receipt of the request. If the request was made orally, the Department would have complied with the APRA if it orally responded to Mr. Hunt’s request within twenty-four (24) hours.

For public agencies that are not state agencies, the fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. *See* I.C. § 5-14-3-8(d). The fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) for color copies or the actual cost of to the agency of copying the document. *See* I.C. § 5-14-3-8(d). Actual cost means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. *Id.* A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers. *Id.* A public agency may require that payment for copying costs be made in advance. The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide multiple copies of an identical record. *See* I.C. § 5-14-3-8(e). *See Opinions of the Public Access Counselor 07-FC-19; 08-FC-75; 08-FC-259; 12-FC-42.* As applicable here, Mr. Hunt was provided with a copy of the schedule after payment was received. As the schedule was amended, although the APRA would not prevent Mr. Hunt from submitting a request for a copy of the amended schedule, he would still be required to pay the respective copy fee for the amended record pursuant to section 8 of

the APRA. The Department can require that all fees be paid prior to disclosure. Alternatively, the Department would not be required to provide multiple copies of an identical record that had previously been provided to the requestor.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Michael Hunt, Matthew Worthman