



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

November 3, 2010

Mr. Michael A. Christianson  
DOC # 135489  
3038 W. 850 S.  
Bunker Hill, IN 46914

*Re: Formal Complaint 10-FC-237; Alleged Violation of the Access to Public Records Act by the Miami Correctional Facility*

Dear Mr. Christianson:

This advisory opinion is in response to your formal complaint alleging the Miami Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* As of today, we have not received a response from the Facility.

## BACKGROUND

In your complaint, you allege that the Facility did not respond to your request for a copy of a press release titled, "MCF Expands Its Braille Shop and Renames It Miami Accessible Media Project." You claim that you requested the record on September 17th, but had not received the record or a response as of September 30th.

## 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." I.C. § 5-14-3-1. The Facility is 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 Facility's public records during regular business hours unless the 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 or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. 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, if the Facility failed to respond to your written request within the required seven (7) days, your request is deemed denied.

It is unclear to me why the Facility has denied your request. Without the benefit of a response from the Facility, I do not have sufficient information to determine whether or not the substance of the denial violated the APRA. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Facility has not provided a justification for withholding the record at issue here, it is my opinion that the Facility has failed to carry its burden. If the Facility cannot justify withholding the record, I encourage the Facility to release the record to you as soon as possible. To the extent the Facility persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Facility to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Facility has not carried its burden of proof to demonstrate that the records you requested are exempt from disclosure under the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor